

MONTANA LEGISLATIVE HISTORY

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Chapter 525 19 95

Bill H 504 S _____ Original bill & history ___C

H. Committee on Human Services & Aging

Hearing Date(s) Feb 15 ✓C

_____ C

_____ C

_____ C

Date Out Feb 16 ✓C

S. Committee on Public Health, Welfare & Safety

Hearing Date(s) Mar 13 ✓C

Mar 15 ✓C

_____ C

_____ C

Mar 12 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____

Report _____

3/15 SIGNED BY PRESIDENT
 3/17 TRANSMITTED TO GOVERNOR
 3/21 SIGNED BY GOVERNOR
 CHAPTER NUMBER 185
 EFFECTIVE DATE: 10/01/95

HB 503 INTRODUCED BY HIBBARD, ET AL.
 REVISE SALARIES FOR STATE CONSTITUTIONAL OFFICIALS

2/09 INTRODUCED
 2/09 FIRST READING
 2/09 REFERRED TO APPROPRIATIONS
 2/10 FISCAL NOTE REQUESTED
 2/16 FISCAL NOTE RECEIVED
 2/16 FISCAL NOTE PRINTED
 3/10 HEARING
 3/15 TABLED IN COMMITTEE
 3/24 MISSED TRANSMITTAL DEADLINE FOR 67TH DAY
 DIED IN COMMITTEE

HB 504 INTRODUCED BY COBB

REQUIRE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND
 DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES
 GOVERNING USE OF A PERSONAL ASSISTANT BY A PERSON WITH A
 DISABILITY

2/09	INTRODUCED		
2/09	FIRST READING		
2/09	REFERRED TO HUMAN SERVICES & AGING		
2/10	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/16	COMMITTEE REPORT—BILL PASSED		
2/18	2ND READING PASSED AS AMENDED	94	5
2/21	3RD READING PASSED	93	5
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/13	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	48	0
3/27	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	92	3
4/10	3RD READING AMENDMENTS CONCURRED	95	3
4/11	SIGNED BY SPEAKER		
4/12	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 525		
	EFFECTIVE DATE: 10/01/95		

and guaranteed issue and a community rating which has proved to be successful.

{Tape: 1; Side: B; Approx. Counter: 000; Comments: n/a.}

HEARING ON HB 504

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, presented HB 504. He explained the bill would require the Department of Social and Rehabilitation Services and the Department of Labor and Industry to adopt rules to govern the use of personal assistants for people with disabilities.

Proponents' Testimony:

Barbara Larson, Coalition of Montanans Concerned with Disability, testified in support of the bill. EXHIBIT 2 She said HB 504 would provide two directions with each department to create a model program to allow a person with disability to act as the employer of a personal assistant. They would be able to make decisions regarding who to employ, terms of employment, length of employment and other matters. The bill would be exempt from the Nurse Practice Act for a select few who have a one-on-one relationship developed with their physician or other health care professional who would detail what aspects of their care of skilled nursing procedures would be done by their personal care attendant at the direction of the individual with disability.

She pointed out that the bill would result in lower administrative costs. It would allow the personal assistant to provide routine health maintenance activities. This bill would also allow for a family representative to be involved. She submitted the NCIL (National Council on Independent Living) Position on Personal Assistance Services. EXHIBIT 3 She also submitted "Recommendations for Self-Directed Personal Assistance Service Program" (EXHIBIT 4) and letters of support from Joe Harrington, Billings; Mike Mayer, Missoula; David A. Smith, MSW, Social Services/Clinical Director, Rural Institute on Disabilities, University of Montana; Alexandra Elders, Missoula; and Peter Leech, MSW, Missoula. EXHIBIT 5

Sheila Jamen, Missoula, testified in support of the bill. She employed a personal care attendant and was able to self direct her care for over a year. She said this has been successful for her and was very important.

Paul Peterson, Missoula, testified in support of the bill. He pointed out the problems he encountered in using personal care attendants. The importance of the bill would be the control over their own lives that people with disabilities want. EXHIBIT 6

Michael J. Regnier, President of the Coalition of Montanans Concerned with Disabilities, testified in favor of HB 504. He pointed out that Westmont, the single statewide vendor for PAS in Montana had as high as a 400% turnover rate, which means the entire staff of personal assistants would change as often as four times a year. The number is now around one time per year, so there are very few trained personal assistants available. He pointed out common problems of abuse and neglect and the lack of control the disabled had over the situation. The bill would improve the situation for the consumers to have control over who they hire and supervise without relying on some bureaucratic administrative service provider. EXHIBIT 7

Ralph Martin presented written testimony from Ernie Pepion in support of the bill. Mr. Pepion pointed out the need for dignity and independence. EXHIBIT 8

Joyce DeCunzo, Department of Social and Rehabilitation Services, Medicaid Division, spoke in support of the bill. She said the department supports the bill, since the creation of this program would provide disabled Montanans the opportunity to take control of very personal services, which is in line with promoting self-sufficiency and preserving dignity. EXHIBIT 9

Dorinda Orrell, Belgrade, testified in support of the bill. She pointed out the variety of different individuals that took care of each of her personal needs. There were so many people involved with her care, each with separate rules and defined territories, that she was disoriented. She just wanted to hire someone she could trust without interference from the state. EXHIBIT 10

James Meldrum, Montana Independent Living in Helena, testified in support of the bill.

Sharon Anderson, Montana Advocacy Program, spoke in support of the bill.

REP. BILL CAREY and REP. JOHN BOHLINGER asked to be listed as proponents.

Informational Testimony:

Jean Ballantyne, RN from Billings and member of the State Board of Nursing, said the board's position was neutral on HB 504. She discussed concerns about potential harm to the consumer. The bill would allow personal assistants to provide functions that are subject to regulation by the Board of Nursing. She pointed out that cost savings could ultimately increase costs due to complications that result from a lack of nursing attention. EXHIBIT 11

Ms. Ballantyne submitted testimony from Nancy Heyer, RN, President of the Board of Nursing. EXHIBIT 12

Opponents' Testimony:

Patricia Goudie, RN, Sun River and a former rehabilitation nurse, testified in opposition to the bill. She pointed out the health maintenance activities are tasks that fall under the Nurse Practice Act for good reasons. Medication administration, bowel and bladder management and wound care are more than tasks that someone can be trained to perform. Nurses do more than perform tasks, they monitor and assess patients' response to treatment. The bill would allow uneducated and untrained persons to perform urinary catheterization or medication injections with no knowledge of the possible consequences of infection or complications. She said the bill would cut costs at the expense of public safety. EXHIBIT 13

Barbara Booher, Executive Director of the Montana Nurses Association, representing 1,400 registered nurses in Montana, spoke in opposition to HB 504. She pointed out that although the intent of the bill was to allow persons with disability the independence to employ personal care attendants of their choice, in essence, it would grant any untrained individual immunity from the Board of Nursing to allow the practice of nursing without a license. EXHIBIT 14

{Tape: 1; Side: B; Approx. Counter: 698; Comments: n/a.}

Questions from Committee Members and Responses:

REP. BOHLINGER asked Mr. Regnier about the difficulties in getting personal care attendants provided through Westmont. Mr. Regnier replied that the bill would provide choice and management over the personal care attendant by the consumer. REP. BOHLINGER asked if he could describe the process to help the consumer hire someone as a personal care attendant to provide continuity of service. Mr. Regnier explained that their facility in Missoula operates a training center for the personal care attendant. The services include communication skills, conflict resolution and training of particular tasks and routines.

REP. BOHLINGER asked if that facility was able to train the attendants in some of the nursing functions that the opponents say are beyond the scope of the attendants. Mr. Regnier said they did not provide that training directly, but was geared instead toward those types of tasks that can be trained by a registered nurse or a rehabilitation person. He emphasized the training provided was for a low level of expertise involved in the tasks.

REP. BOHLINGER noted the differences in costs of registered nurses at \$67.51 per visit as opposed to the functions of a personal care attendant of \$11.03 per hour. Mr. Regnier replied that it was an obvious cost savings to consumers around the state.

REP. BRUCE SIMON asked Ms. Goudie about patients being routinely taught by their physician to do self-injections or other types of maintenance. Ms. Goudie replied that patients and their families are usually taught those things in rehabilitation centers. However, sterile techniques must be followed. Families are often immune to something in their own home but when someone comes in from outside, the chance for infection is much greater.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

REP. LIZ SMITH asked about liability. Ms. Booher replied that models from other states--Kansas, in particular--the liability is assumed by the person who is employing the care provider.

Closing by the Sponsor:

REP. COBB said the issue was not about saving money but rather control over their own lives. He closed on the bill.

{Tape: 2; Side: A; Approx. Counter: 258; Comments: n/a.}

HEARING ON HB 539

Opening Statement by Sponsor:

REP. LOREN SOFT presented HB 539. He read violations that were in statute for selling tobacco products to youth. EXHIBIT 15 He pointed out that no one had ever enforced these violations under this statute. He said that even though law enforcement has many other pressing concerns, that this needs to be looked at because it represents one of the most deadly and expensive health care issues faced today. He discussed the statistics that former Surgeon General C. Everett Coops said "should alarm anyone who is concerned with the future health of today's children." Annual deaths from smoking are 434,000, which are more than the combined deaths of alcohol, car accidents, fires, AIDS, drugs, suicides, and homicides combined. About 75% of people using tobacco, use it before the age of 18. Tobacco is a "gateway drug" to those using illicit drugs. He pointed out that all states ban the sale of tobacco products to children under the age of 18, but it was a serious problem on how to enforce that.

He described the Montana Teen Institute which is a program where teens get involved with issues and leadership training projects. The teens and an adult will go buy cigarettes from a store and if they say they will not sell to underage persons or ask for their ID that will be great. However, if they sell to the teen, then the adult will be there to hand out literature and materials about the effects of tobacco. They do this three times as a compliance check. On Page 2 of the bill, subsection (4)(a), it states what happens if there is a violation of the offense.

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 2-15-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. John Bohlinger, Vice Chairman, Majority	✓		
Rep. Carolyn Squires, Vice Chair, Minority	✓	W	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	W		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Deb Kottel	✓		
Rep. Bonnie Martinez	✓	W	
Rep. Brad Molnar	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith	✓		
Rep. Susan Smith late	✓	W	
Rep. Loren Soft	✓		
Rep. Ken Wennemar	✓	W	

REP. SQUIRES noted that this was for a pilot for 50 people so it would not include everybody.

{Tape: 6; Side: B; Approx. Counter: 000; Comments: n/a.}

Vote: The question was called. The motion carried 15-1 with REP. SQUIRES voting no.

EXECUTIVE ACTION ON HB 539

Motion: REP. SOFT MOVED THAT HB 539 DO PASS.

Discussion: REP. SOFT presented amendments. He asked Ms. Mona Jamison to explain the amendments.

Motion: REP. SOFT MOVED THE AMENDMENTS.

Discussion:

Ms. Jamison said the amendments would help clarify the bill. She said that single cigarettes should not be sold. The amendment #12 addresses the due process portion. If the assessment fee is challenged, then it would be a contested case under the Administrative Procedure Act. This is a concern. Then it becomes a matter of philosophy. Amendment #5 on the dry runs, the first through third offense, is punishable by a verbal notification.

Vote: The question was called on the amendment. The motion to adopt the Soft amendment carried.

Discussion:

REP. SIMON presented an amendment to restore language on page 3, line 9, subsection (4). He pointed out if the merchant has a program in place and have told their employees not to do this, they should not be punished if some clerk ignores their directives and sells to minors. He moved the amendment.

Mr. Niss said there was no civil penalty under subsection (2) but was a penalty for failure to obtain a license. He spoke against the amendment.

REP. GREEN also spoke against the amendment since he felt it would take the heart out of it.

REP. KOTTEL spoke against the bill since there were three warnings that take place prior to any government action.

REP. WENNEMAR spoke against the amendment.

Vote: The question was called on the Simon amendment. The motion failed.

REP. BOHLINGER referred to lines 19, 20 and 21 in the bill on page 1 regarding the site for the new facility. He agreed with the bill.

REP. SIMON responded to REP. SMITH'S concern about the costs of building the facility. He said the figures she had could not be accurate. Some of the facilities would be utilized more for administration rather than for the patients. REP. SMITH replied that she had the breakdown of that and the new building was \$11 million, \$135 per square foot. The additional money has to do with renovation with existing buildings, one of which houses 56 patients. It also centralizes the heating system and renovation of the other buildings. It costs more to move because of the existing buildings that are already being utilized.

Vote: The question was called on HB 468. The motion carried 13-3 with REPS. SQUIRES, LIZ SMITH, and WENNEMAR voting no.

EXECUTIVE ACTION ON HB 507

Motion: REP. BOHLINGER MOVED THAT HB 507 DO PASS.

Discussion:

REP. SMITH said some of these issues were being addressed in the Select Committee on Health Care and they did not believe this bill would do what it should.

Substitute Motion: REP. LIZ SMITH MADE A SUBSTITUTE MOTION TO TABLE HB 507. The question was called. The motion carried on a roll call vote.

EXECUTIVE ACTION ON HB 504

Motion: REP. CHRIS AHNER MOVED THAT HB 504 DO PASS.

Discussion:

REP. BERGMAN said the bill should be passed. He said this was a battle between Medicaid and Westmont. Westmont does not do their job. They have a contract with Medicaid and so they are stuck. Medicaid is not investigating to make sure those people are doing their job.

REP. BOHLINGER said the issue was one of providing people an opportunity to take control of their lives and he urged the committee to vote for this.

REP. GREEN pointed out the people were not incompetent but were just disabled.

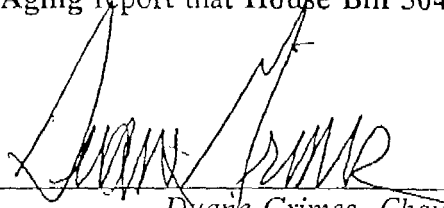


HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 504 (first reading copy -- white) do pass.

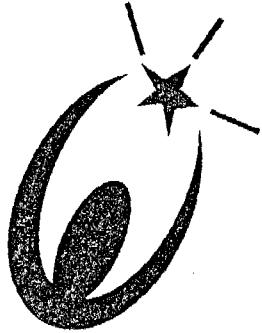
Signed: 

Duane Grimes, Chair


Committee Vote:

Yes 15, No 1.

401300SC.Hdh



*Coalition of Montanans
Concerned with Disabilities*

P.O. Box 5679
Missoula, MT 59806
(406) 721-0694

EXHIBIT 2
DATE 2/15/95
HB 504

February 15, 1995

Chairman Duane Grimes
House Committee on Human Service and Aging
Capitol Station
Helena, MT 59620

RE: House Bill No. 504: Personal Assistance Reform Bill

Dear Chairman Grimes and Members of the Committee:

The intent of this legislation is to make available to people with disabilities who require personal assistance services the option of directing their own care through a self directed service model which recognizes the consumer as employer. Further, this legislation will promote cost savings in the Medicaid-funded personal assistance service program through two primary mechanisms. First, persons participating in the self directed program will not require the oversight, supervision, and control by a medically-oriented provider agency, as is currently practiced in the PAS program administered by West Mont. Lower administrative and nursing intervention costs will provide cost savings. Second, the act will allow personal assistants to perform routine health maintenance activities, judged by a physician or health care professional to be safe for that individual to receive, to be performed by a personal assistant rather than by licensed nurses as required by current state law. Personal assistant wages are considerably lower than those of LPN's or RN's, which translates into additional money saved.

It is important that committee members understand a few key issues in considering this legislation. First, the self directed service model is not designed to meet the needs of all people currently receiving personal assistance services in the state of Montana. It is targeted for those individuals who have the capacity and the desire to direct their own services to do so without the intrusion in their daily life imposed by an outside agency. For these individuals, this legislation opens the door for increased independence, dignity, and freedom from unnecessary bureaucracy and intervention in their day to day lives. On the other hand, it is well recognized that many individuals have neither the skills, nor the desire to participate in a self directed program. This bill would do nothing to prevent such individuals from receiving the current, more medically-oriented personal assistance services through an agency-based model, as currently seen in the West Mont program.

Second, it is important to understand that the self directed personal assistance model, while not a medical model, does address a fundamental need to insure that the basic health and safety needs of participants are met. Some health care professionals may argue that without ongoing nurse supervision and extensive training of personal assistants that individuals' health will be jeopardized. This is not the case. The major protection against this occurrence lies in the definition of health maintenance activities as defined in the legislation. On page four, lines 14 - 18, the bill clearly spells out that "health maintenance activities" to be performed by personal assistants are those activities in the opinion of the physician or other health care professional for the person with a disability that could be performed by the person if the person were physically capable and if the procedure can be safely performed in the home. Also, on page one in the statement of intent for HB 504, the legislation reads (lines 20 - 23) that before a person with a disability would be allowed to act as an employer, the person must also have a plan of care approved by a physician or health care professional, stating what aspects of the disabled person's care the personal assistant may be assigned. In short, only those health maintenance activities which the health care professional and the consumer agree on which may be safely performed will be included under the tasks which personal assistants may provide.

Third, consumer responsibility is a key concept in a self directed personal assistance service model. The administrative rules to be adopted by the Department of Social & Rehabilitation Services and the Department of Labor should provide avenues for consumers to receive training in management of personal assistants if the consumer is in need of such support, and should in addition provide for assistance in the training of personal assistants if necessary. Once trained, however, consumers are responsible for ensuring that their personal assistants work as directed and perform to their satisfaction. The consumers, not a provider agency are responsible for ensuring that their needs are met.

Fourth, it should be noted that many other states have established self directed personal assistance programs which recognize the consumer as employer of personal assistants as opposed to an agency-based model. Kansas, South Dakota, California, Oregon, and New York are among the states which have successfully implemented self directed services.

The National Council on Independent Living (NCIL), in its position on personal assistance services, recognizes key features of the model which is being suggested for Montana. The following are quotes from the NCIL position paper.

- * "The PAS users choice, direction and control in selecting, training, scheduling and supervising their personal assistants must be maximized in all management options."
- * "All models must be non-medicalized and community based to the greatest extent possible."
- * "State issues such as medical and nursing practices acts and personal

assistants registry acts must be resolved so that health-related tasks such as medication dispensation and injection and catheterization can be performed by unlicensed personal assistants under the direct control and supervision of PAS users when that is the choice."

Further, HB 504 reflects the recommendations for a self directed personal assistance service program which were developed in the fall of 1994 by the Missoula work group established by Montana Department of Social and Rehabilitation Services in order to obtain feedback on reform of Montana's personal assistance service program. Copies of both the working group recommendations and the NCIL position statement of personal assistance services are attached.

On a final note, we would like the committee to consider an amendment to the bill as introduced which would also allow for an "immediately involved representative", such as a parent or guardian, to assume the responsibilities of consumer control in the self directed model if the consumer is unable to direct his or her own care. This provision was inadvertently overlooked as the draft language of this legislation was developed. By allowing family members or guardians to serve in the capacity of the responsible consumer, the state will realize even greater cost savings as more individuals are able to participate in the self directed program.

Respectfully submitted by:



Barbara Larsen,
Coalition of Montanans Concerned with Disabilities

NCIL

NATIONAL COUNCIL

ON

INDEPENDENT LIVING

POSITION ON

**PERSONAL ASSISTANCE
SERVICES**

NATIONAL COUNCIL ON INDEPENDENT LIVING
POSITION ON PERSONAL ASSISTANCE SERVICES

April 1994

THE NATIONAL COUNCIL ON INDEPENDENT LIVING

The National Council on Independent Living (NCIL) is the only grassroots national organization run by and for people with disabilities. Almost everything NCIL has accomplished to date has been due to the tireless energy and total commitment of NCIL members, the Governing Board and individual volunteers across the nation. In just ten years, NCIL has established itself as THE national voice of the Independent Living Movement, Centers for Independent Living (CILs), and people with disabilities who are leading the disability rights movement.

Centers for Independent Living are community-based, non-residential, nonprofit corporations which are governed and controlled by people with different types of disabilities. CILs provide at least four core services to a cross disability population: individual and systems advocacy, information and referral, independent living skills training, and peer counseling.

There are more than 300 consumer-controlled CILs in the United States today.

NCIL, along with other national disability-related organizations including American Disabled for Attendant Programs Today (ADAPT), the World Institute on Disability (WID), and the Consortium for Citizens with Disabilities (CCD), has been at the forefront in promoting the adoption of a national policy to establish a national Personal Assistance Services (PAS) program. NCIL and other groups committed to a national PAS program are firm in the belief that a national PAS program should have substantial input and influence from consumers of the service at the governance level and that a national PAS program should be consumer directed and controlled to facilitate the full implementation of the vision of the Americans with Disabilities Act of 1990.

BACKGROUND ON PERSONAL ASSISTANCE SERVICES

Almost 12.6 million Americans require some assistance from another person with daily living tasks such as dressing, eating, toileting, housekeeping, remembering to take medications, balancing a checkbook, and other everyday activities, according to WID. This assistance is called Personal Assistance Services. A study conducted by Families USA reports that 64% of people needing such assistance were not able to get it last year. National long term

services policy is biased in favor of institutionalizing people who need such assistance rather than assisting them in their own homes and/or communities. This bias is reflected in the fact that the federal government spends 82% of federal long-term services funds on nursing homes (\$28.4 billion), six times as much as on home and community-based services \$4.6 billion). In addition, states that receive Medicaid funding are mandated to finance nursing home confinement for low income people, but have no such requirement for financing Personal Assistance Services for the millions of people with disabilities who could be independent in their homes and communities with such assistance. As a matter of fact, a state must go through a difficult waiver process to get permission from the federal government in order to direct any of its Medicaid funding to home and community-based services. Currently, many states that do have the waiver are cutting back home and community based services including Personal Assistant Services because of tight budgets. Stereotyping attitudes on the part of many people who cannot conceive of people with disabilities living in the community with Personal Assistance Services along with powerful lobbying efforts by the \$60 billion nursing home industry have perpetuated this institutional bias for too long.

NCIL POSITION ON PERSONAL ASSISTANCE SERVICES

NCIL's basic position on Personal Assistance Services is that the institutional bias on the part of the federal government and state governments must be reversed and that people of all ages with all types of disabilities must have the option of obtaining assistance with daily living in their homes and communities through a national consumer-controlled Personal Assistance Services program. In addition to cost savings, the dignity, quality of life, and productivity of people with disabilities would be enhanced. Americans with all types of disabilities and all citizens of the United States deserve no less.

NCIL believes that a national Personal Assistance Services program must have certain characteristics in order to meet the needs of people with disabilities in their homes and communities most effectively and efficiently. These characteristics are spelled out below and further delineate NCIL's position on Personal Assistant Services.

Definition of PAS

Personal Assistance Services refers to assistance from another person or persons with tasks in the home or community which people with disabilities would typically be able to do for themselves if they did not have a disability and includes assistance with various types of cognitive, physical, mental and sensory tasks.

Types of PAS

NCIL believes the following comprehensive range of Personal Assistance Services must be available:

Personal services including, but not limited to, assistance with bathing and personal hygiene (including menstrual care), bowel and bladder care (including catheterization), dressing and grooming, transferring, eating, medications and injections, and operating respiratory equipment and other assistive devices.

Household services including, but not limited to, assistance with meal preparation, light and heavy cleaning, laundry, repairs, and maintenance.

Community services including, but not limited to, assistance with shopping, employment, education, participation in community and civic affairs, and leisure.

Cognitive services including, but not limited to, assistance with money management, scheduling, planning, cuing, and decision making.

Communication services including, but not limited to, interpreting, reading, and writing.

Mobility services in and out of the home including, but not limited to, escorting and driving.

Assistance with infant and child care.

Security and safety-enhancing services including, but not limited to, assistance with monitoring alarms and arranging for periodic in-person or telephone contacts.

NCIL further believes that although many of these services do not meet the traditional definition of "medical necessity" and will not result in medical improvements to the disabling conditions, their provision is necessary for people with disabilities to maintain their health and to prevent secondary disabilities and illnesses.

Program Models

Personal Assistance Service users must be able to choose freely from an array of PAS program models ranging from a voucher or direct cash payment model in which consumers totally manage their own PAS without medical supervision and the necessity of a burdensome, costly administrative structure to a contract agency model in which an agency assumes varying degrees of responsibility for managing the PAS.

The PAS users choice, direction and control in selecting, training, scheduling and supervising their Personal Assistants must be maximized in all management options.

The PAS users choice, direction and control of administrative tasks including, but not limited to, determining pay rates, withholding taxes, and paying benefits must be maximized in all management options.

All models must be non-medicalized and community-based to the greatest extent possible.

State issues such as Medical and Nursing Practices Acts and Personal Assistant Registry Acts must be resolved so that health-related tasks such as medication dispensation and injection and catheterization can be performed by unlicensed Personal Assistants under the direct control and supervision of PAS users when that is the choice.

Coverage and Eligibility

NCIL believes that PAS coverage must extend to people of all ages with all types of disabilities including cognitive, sensory, mental and physical disabilities and that eligibility criteria must not discriminate based on age, type of disability and/or any other factor unrelated to need. NCIL's position is that individuals must be eligible for a national PAS program if they experience a functional disability of a temporary or permanent nature resulting from injury, aging, disease or congenital condition which limits their ability to perform one or more of life's major activities including, but not limited to dressing, bathing, grooming, getting around both inside and outside the home, eating, preparing meals, shopping, cleaning house, communicating, understanding, controlling emotions, and performing cognitive tasks such as problem solving and processing information.

Eligibility criteria must be developed that do not exclude people based on age; type of disability; onset of disability such as congenital, injury, disease, or later age onset; and health, family status, race, national origin, cultural background, religion, gender, sexual preference and/or geography.

Eligibility criteria must not include disincentives for employment and/or marriage.

Eligibility must not be based on income factors although cost-sharing is acceptable based on a sliding income scale.

No person must be forced into or kept in an institution because of the denial of PAS.

Governance of a National PAS Program

NCIL believes that the views of PAS users must be paramount in the design, delivery, and evaluation of a national PAS program.

PAS users must be decisively and formally involved and represented at all levels of policy determination, planning, program design, and implementation of a national PAS program.

Any national and/or state governance mechanisms must include PAS users in substantial decision-making roles.

Any national PAS program that gives states the flexibility to plan, design, and implement state PAS programs must require each state to: 1) develop a long range three to five year plan to be updated annually which delineates the state's PAS philosophy, program design, and implementation and evaluation plans, and 2) establish a policy board consisting of at least 51% PAS users with a broad range of disabilities which has the authority to sign off the required state plan and updates jointly with the lead agency. Such policy boards must be independent of state agencies and must have adequate staff and budgets to carry out the assigned responsibilities.

NCIL believes that whatever national program design and funding mechanisms are employed, states should be required to adopt the definition and provide the basic services, program models, coverage and eligibility criteria, governance mechanisms, and grievance and appeal procedures cited in this position paper in order to provide uniform coverage for people with disabilities across the states.

NCIL further believes that a gradual phase in of a PAS program would be desirable in order that a PAS infrastructure can be developed to meet the demand.

Financial Consideration

NCIL believes that financing mechanisms and regulations for a national PAS program should in no way reflect a bias toward institutionalization and away from Home and Community Based Services.

Cost-sharing and/or tax credits must be part of a national PAS plan based on a sliding scale relative to income, but with a cap on out-of-pocket consumer expenditures at a percentage of income and/or on tax

credits. The families of children who receive PAS benefits must be treated the same as direct PAS users in terms of cost-sharing and/or tax credits.

There must be no unfavorable differential federal PAS match requirement from states relative to any other long-term service program.

Any benefits, including direct vouchers/cash, derived by PAS users must not be treated as disposable income nor counted as income for the determination of eligibility for other statutory benefits/services.

Federal and state governments must clarify tax withholding and Personal Assistant benefit requirements for PAS users and providers.

Long-term services insurance reform should be undertaken in conjunction with a national PAS program which addresses standardized benefits packages and elimination of pre-existing condition exclusions.

No one who receives PAS benefits at the time of adoption of a national PAS program must lose the benefits they are receiving.

Appeal and Grievance Procedures

NCIL believes that a national PAS program must include a uniform appeal/grievance procedure independent of funders, providers, and assessors which has an expeditious time-line and which provides expenses for the use of advocates and/or legal counsel by PAS applicants/users or their families.

Conclusion

NCIL believes that unnecessary institutionalization is a deplorable waste of both human and financial resources and that a national consumer-controlled non-medical model PAS program must be adopted to help assure the elimination and/or avoidance of such waste.

RECOMMENDATIONS FOR SELF-DIRECTED
PERSONAL ASSISTANCE SERVICE PROGRAM

EXHIBIT
DATE 2/15/95
HB 504

I. ESTABLISH "CONSUMER AS EMPLOYER" MODEL

Self-Directed Individual, Option A:

The consumer directs his or her own care:

1. the consumer, as employer, is responsible for:
 - a. interviewing applicants to be the in-home care provider
 - b. selecting the in-home care provider
 - c. training the in-home care provider
 - d. supervising the in-home care provider
 - e. maintaining accurate time logs of the in-home care provider
 - f. terminating the in-home care provider
2. Provider Agencies, as payroll agents, are responsible for:
 - a. timely payment of the in-home provider
 - b. deducting social security, income tax, unemployment insurance, worker's compensation, health insurance
 - c. recruitment of applicants for in-home care providers
 - d. training the consumers to be employers
 - e. assuring a proper standard of care
 - f. assistance in the training of in-home care providers at the request of the consumer
 - g. initial assessment of PAS needs and ongoing authorization of additional PAS hours
3. SRS, as program administrator, is responsible for:
 - a. establishing and monitoring contracts with provider agencies
 - b. developing provider agency eligibility criteria and performance standards
 - c. providing prompt payment of provider agency claims
 - d. maintaining a third party grievance procedure for consumers of both self-directed and agency based programs
 - e. identifying provider agencies statewide

Individuals who are not self-directed, but have an immediately involvement representative
Option B:

1. The representative assumes responsibilities of consumer under Option A, above.
2. Provider agencies and SRS assume same responsibilities as in Option A, above

ISSUES:

1. Numerous states, including Kansas, South Dakota, and Oregon have established self directed PAS programs. In order to implement a "consumer as employer" model in Montana, it may be necessary to change current Department of Labor laws. Please refer to attachments regarding Oregon's statute and the issue sheet describing employment in Kansas.
2. It is vital that the provider agencies to be established as payroll agents operate in a truly consumer orientated manner, thus insuring a truly self directed PAS service program.
3. There is a need for statewide availability for consumers to participate in the self directed program. While statewide availability is the ideal, the self directed model should not be disallowed if statewide coverage cannot be established.
4. Administrative responsibilities of SRS with the addition of a self directed component should not increase greatly since the agency will also be administering numerous agency-based providers with the expansion to a multivendor system.

II. OFFER SELF-DIRECTED OPTION TO BOTH HOME & COMMUNITY BASED SERVICE (WAIVER) RECIPIENTS AND STRAIGHT MEDICAID RECIPIENTS

ISSUES:

1. There will be two levels of service with this model - waiver has more flexibility with social and other PAS services allowed. Not ideal situation.
2. Include initial assessment and authorization of additional PAS hours in duties of provider agencies.

III. REFORM NURSE PRACTICE ACT TO ALLOW PA'S TO PROVIDE "HEALTH MAINTENANCE" DUTIES IN ADDITION TO ROUTINE PERSONAL ASSISTANCE, HOMEMAKING, COMPANION-TYPE, AND COGNITIVE-ASSISTANCE TASKS.

1. "Attendant Care services" means those basic and ancillary services which enable an individual in need of in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care and mobility.
2. "Basic services" shall include, but not be limited to:
 - a. getting in and out of bed, wheelchair or motor vehicle, or both;
 - b. assistance with routine bodily functions including, but not limited to: health maintenance activities; bathing and personal hygiene; dressing and grooming; and feeding, including preparation and cleanup.

3. "Ancillary services" means services ancillary to the basic services provided to an individual in need of in-home care who needs one or more of the basic services, and include the following:
 - a. homemaker-type services, including but not limited to, shopping, laundry, cleaning and seasonal chores;
 - b. companion-type services including but not limited to, transportation letter writing, reading mail and escort; and
 - c. assistance with cognitive tasks including, but not limited to managing finances, planning activities and making decisions.
4. "Health maintenance activities" include, but are not limited to, catheter irrigation; administration of medications, enemas and suppositories; and wound care, if such activities in the opinion of the attending physician or licensed professional nurse may be performed by the individual if the individual were physically capable, and the procedure may be safely performed in the home.

ISSUES:

1. Legislative change is large project, coming up quickly.
2. Cost savings with less nursing intervention.
3. Expect major opposition from Board of Nursing.

EXHIBIT

4

DATE

2-15-95

1

HB 504

IV. INCREASE ATTENDANT WAGES

ISSUES:

1. Less administrative expense with self-directed model - use savings for increased wages.
2. Possible difference in wages for self directed versus agency based personal assistants is potential for problems.

V. ALLOW CONSUMER FAMILY MEMBERS TO RECEIVE REIMBURSEMENT FOR PROVIDING PA SERVICES

ISSUES:

1. In rural areas, family members are often the only persons available to provide PA services.
2. A waiver will be needed from HCFA to change definitions of immediate family member to be reimbursed.

Joe Harrington
2291 Avenue C #6
Billings, MT 59102

EXHIBIT 5
DATE 2/15/95
HB 504

Chairman Dwayne Grimes
House Committee on Human Services and Aging
Capitol Station
Helena, MT 59601

February 15, 1995

Dear Chairman Grimes:

My name is Joe Harrington and I am a thirty year old male. As a result of a car accident about ten years ago, my spinal cord was injured at T3-4. The nerves that once controlled my left arm and shoulder were also damaged, in that the seat belt which saved my life, tore the nerves from my spinal cord. The bottom line of all this is that at present I only have the use of one hand and will need a wheelchair for the rest of my natural life. In addition to needing a costly mobility aid, the accident also left me physically unable to perform certain basic tasks for myself, like dressing, getting in and out of bed, some household chores, and toileting. For these duties I must depend upon help from another person, often referred to as a Personal Care Attendant (PCA).

I was a fortunate citizen of Yellowstone County to be involved in the Self-Directed Care Pilot Program from its inception. This was very much a learning experience for me, in that I was given an opportunity to exercise authority over aspects of my life which had, in the past been given to someone other than myself. This program gave me a great deal more control and confidence over my own life and made me feel as if I could accomplish more; because even though I still wasn't able to perform these tasks by myself, I was at least directly responsible to see that my needs were met.

I also graduated from college during this time, and feel as if I must give some credit for that to the Pilot Program. I graduated with a BSED in Elementary Ed. and later returned to school and got my certification in Special Ed. (funding for both of these endeavors were largely underwritten by Vocational Rehab). I needed to get out of bed at five a.m. in order to make it to school by eight when I student taught, and I know the higher wages PCA's were paid under the Pilot Program helped in that regard.

I am writing this letter in response to H.B. #504, which could have a very positive impact on my life. As I understand the proposed bill, it would ask the state to

extend employment responsibilities to qualified persons with disabilities under a self directed model.

I don't think I can fully express what this type of freedom and control over my own life would mean, but suffice it to say, it would help a whole lot. I'm not knocking WestMont, so I don't want this to sound like a put-down. I'm grateful that it exists and under a contract from the state they pay people which help me with things which I'm unable to do. However, it usually takes one to two weeks from the time I find, interview, and send an applicant to WestMont (where they are interviewed again and must go through training classes), before they can work with/for me.

This bill could change some of the apprehension for me and that would be an added bonus. It would also increase my personal duties and responsibilities, but when balanced with a greater amount of control over my own life, it would be well worth it and I look forward to the challenge.

I'm presently working, and it feels good to be a more productive member of society. If, however, one of my helpers quit unexpectedly, I might not be able to get to work and could lose my job. I feel that being able to fill gaps in my PCA coverage more quickly would really help me remain employed and contributing to the tax base.

Another area in my life that this amendment could effect positively is in regards to my bowel program. Presently, an LPN is required to do this, and I feel this a waste of money. In the past, my PCA's performed this for me (under my direction) and this was less of a hassle for me. It's bad enough needing help with such a private act in the first place, but having two people around (an LPN and a PCA) seems like even more of an injustice.

Thank you for your consideration in this matter.

Sincerely,



Joe Harrington

EXHIBIT 5
DATE 2-15-95
HB 504

February 15, 1995

Mike Mayer
2370 Village Square
Missoula, MT 59801

Chairman Duane Grimes
House Committee on Human Services and Aging
Capitol Station
Helena, MT 59620

Dear Chairman Grimes and Members of the Committee:

I am unable to attend the public hearing in person today but appreciate the opportunity to submit written testimony for your consideration.

I urge you to pass House Bill 504 because I feel that it does much to enhance the independence of Montanans with disabilities who require personal assistance services. I am quadriplegic and have been utilizing personal assistance services for the past 18 years. I am not a Medicaid recipient, and have no other insurance coverage for my personal assistance services, so I pay for my services out of my own pocket. I am considered by the Internal Revenue Service to be a household employer, employing domestic servants. As such, I am responsible for not only the recruitment, training, management, and supervision of my personal assistants, I also have the responsibility for withholding and paying taxes, filing payroll reports, and other administrative tasks.

I am very thankful that I have the ability to manage my own personal assistants and that I am not forced to participate in the Medicaid-funded personal assistance program as it currently exists in this state. Individuals on that system have little or no control over selecting, training, or managing their own personal assistants. House Bill 504 would allow those individuals on Medicaid who receive personal assistance services the same option to manage their own day to day care. People who have the desire and the ability to manage their own services must be given the opportunity to do so. By allowing them to direct their own personal assistance services, the state of Montana will realize cost savings in addition to allowing them more independence and dignity in their day to day routine.

Imagine if you will a situation in which you require assistance but have virtually no control over selecting who comes into your home to help you with very personal and intimate tasks such as bathing, personal hygiene, bowel and bladder care, and other daily functions. How would you feel if you were unable not only to select who comes into your home, but also to control when and how certain tasks are performed. A person should not have to give up such basic rights simply because the state is paying for the

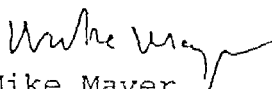
services. The self directed service system which HB 504 would establish would allow other Montanans who receive Medicaid funding the option of being in charge of their daily lives.

I know that certain health care professionals, most probably licensed nurses, will come before this committee and argue that people with disabilities will be put in jeopardy if there is not ongoing nurse supervision and extensive training and certification of personal assistants. They will probably argue that certain tasks, such as bowel and bladder care, wound care, and other basic procedures should only be performed by licensed nurses. They will cite a medical need for requiring ongoing nurse supervision and/or restriction of certain tasks to the realm of licensed nurses only.

This argument does not hold water. Montana's current nurse practice act allows for gratuitous nursing performed by friends or members of the family. As long as friends or family members work without pay, they can provide virtually any nursing service or procedure without restriction or limitation by the nurse practice act. If it were simply a matter of medical necessity, it seems logical that the nurse practice act would not allow any specialized procedures to be done by persons other than licensed nurses. Since the nurse practice act currently allows friends and family members to perform the type of tasks which HB 504 is recommending, it makes perfect sense that trained personal assistants be allowed to do these same procedures at the direction of a person with a disability.

In closing, I thank you for the opportunity to provide written testimony and encourage you to vote yes this important piece of legislation.

Sincerely,


Mike Mayer

Montana University Affiliated RURAL INSTITUTE ON DISABILITIES
52 Corbin Hall, The University of Montana, Missoula, MT 59812

Vietnam Veterans' Children's Assistance Program
634 Eddy Avenue, The University of Montana
Missoula, MT 59812
(406) 243-4131 or 1-800-882-2703
FAX (406) 243-2349

EXHIBIT 5
DATE 2-15-95
HB 504

February 14, 1995

The 1995 Legislature of Montana
House Committee on Human Services and Aging Members
The Capitol
Helena, Montana

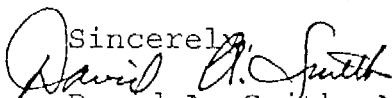
Dear Representatives,

I am writing to you regarding House Bill No. 504 that you will begin formally discussing on Wednesday, February 15, 1995. As I am unable to attend your committee meeting, I have thus chosen to provide you input through this format. Thank you in advance for taking the time to review my comments.

As a little background and to hopefully give justification of my concerns on this bill I offer the following: I have a Master of Social Work degree, and have been working in my chosen profession for over 20 years. A major portion of this time has been spent assisting individuals improve their living conditions and working on goals toward achieving their fullest potential in life. Specific to these goals have included enabling and empowering individuals to pursue educational endeavors, vocational interests, and basic home-based services, rather than institutional care.

In addition, for nine and 1/2 years I worked as a Long Term Care Specialist for SRS, Medicaid Services(1984-1993). In this capacity, I evaluated individuals for appropriateness in living in their own home environment with specific helping agents. Among these helping agents were personal assistance services, which is the crux of House Bill No. 504. It is my opinion, based on approximately 5,000 cases I was actively involved with, during my tenure with SRS, that the "self-directed model" of control by the consumer was a valid and appropriate course then and even more so today. This bill moves the deinstitutionalization of individuals and self-actualization of individuals with special challenges further along the continuum of care concept.

Therefore, I would like to ask that you give all due consideration to the passage of House Bill 504. In conclusion, I would be more than happy to appear at any future hearings on this bill and share past experiences that may be pertinent toward a positive decision in this matter.

Sincerely,


David A. Smith, M.S.W.
Social Services/Clinical Director

(406) 243-5467 VOICE/TDD • FAX (406) 243-2349

February 13, 1995

Alexandra Enders
P.O.Box 7792
Missoula, MT 59807

Representative Duane Grimes
Chair, House Committee on Human Services and Aging
Montana Legislature
Helena, Montana

Dear Mr. Grimes,

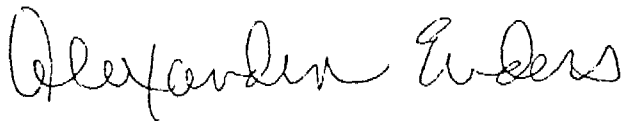
I would like to express my support for House Bill 504, which improves Personal Assistants for Montanans with Disabilities. As a Montana licensed Occupational Therapist, I believe that the changes this bill would cause would be in the best interest of citizens with disabilities who need personal assistants to function independently, as well as in the best fiscal interest of the state. It is undoubtedly less costly for people with disabilities to manage their own assistants, whenever they are capable of doing so. In addition to being a more fiscally responsible option, this approach also gives individuals more control of their lives. They do not have to arrange their schedules awaiting a "skilled visit" from a nurse to carry out a bowel program, for example. They can more fully participate in the regular activities of life -- employment, school, etc, when they can arrange for their personal care, like bowel and bladder care, to flexibly fit with the outside demands on their time. One should not have to organize one's life around the times a nurse can come to your home to help you take care of basic bodily functions; especially when one is capable of supervising these activities oneself.

Not every individual may be prepared to manage and supervise a personal assistant. However, individuals who are capable of supervising their assistants should be permitted, even encouraged, to do so. The underlying principle for deciding if a task can be safely accomplished, should be: if the individual did not have a functional limitation, would they be able to perform this task independently. For example, people with spina bifida, even youngsters, are frequently taught to do their own intermittent catheterization. Many people with a spinal cord injury can safely and competently insert and remove their own foley catheter. If however, the cord injury is above C-6, the person's hands are affected so they will probably not have the hand function to manipulate the apparatus (NB there are exceptions to this, disability levels or diagnosis should never be used as rules for deciding if and when any individual is capable of self-directed care.) The individual should be able to supervise an assistant to do this task. The assistant acts as a replacement for the individual's hands. The individual with the disability assumes responsibility, just as they would if they were using their own hands to do the task.

In the past I was an occupational therapist in California. Individuals in the counties I worked in had the option to manage their assistants even in such tasks as bowel and bladder care. My experience with this approach toward self-directed functional support to daily living tasks is very positive. There were times when I worked with individuals to help them train their own assistants. (A nurse or therapist can be a useful adjunct trainer if and when that might be needed, but should not be required to certify the ability of any particular individual to self-direct and manage their personal assistants.) There were times when I observed experienced individuals mentoring less experienced people with disabilities in personal assistant management techniques. You might contact Peter Leech at the MonTECH program in Missoula (406/243-4597) for more information about the efficacy of peer training and mentoring. Mr. Leech is a social worker, who himself has a disability. Mr. Leech has developed and taught peer counselling and peer mentoring techniques for more than 20 years.

Again, I would like to restate my support for House Bill 504. If there is more information I can provide, please feel free to contact me at 406/726-3809.

Respectfully,



Alexandra Enders, OTR/L

Peter Leech, M.S.W.
5190 Old Marshall Grade
Missoula, MT 59802
406-549-3239

February 13, 1995

Representative Duane Grimes, Chairman
House Committee on Human Services and Aging
House of Representatives Chambers
Capitol Station
Helena, MT 59620

Dear Mr. Chairman, Vice-Chairman and Members of the Committee:

RE: HB-504

I am a Clinical Social Worker with over 31 years of experience working in the field of physical rehabilitation, independent living skills and assistive devices for people with disabilities. I am also a person with a disability acquired almost 39 years ago, which requires me to use a wheelchair for mobility. I am writing today to request your support of HB-504, a Bill to govern self-directed personal assistance services for people with disabilities.

This Bill will allow those people with disabilities who are able, to manage their own personal assistance services at considerable savings of costs over the system currently in place.

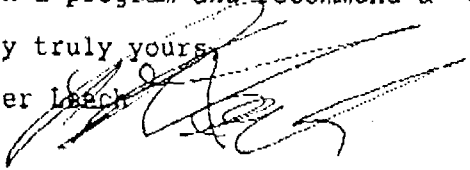
As a person with a disability, I can state emphatically that being able to schedule the personal assistance services I needed according to my schedule, rather than some agency's schedule, was essential for me to be able to attend college and graduate school and develop the marketable skills necessary for me to return to work.

In my work over the years, I have seen too many good plans for education, training and self-sufficiency end in frustration and failure because the plan for personal assistance services supported dependence rather than independence. A self-directed program will support the efforts of people with disabilities to achieve independence.

I encourage you and members of the committee to explore the cost-benefits of such a program and recommend a "do-pass" vote to the House of Representatives.

Very truly yours,

Peter Leech



Fax Transmittal Memo

# of Pages 1	
To: Jim Meldrum	From: Peter Leech
Co.: MILP	Co.: MontTECH
Dept.:	Phone # 243-5676
Fax # 442-1612	Fax # 243-4730

Paul Peterson
6216 Longview Drive
Missoula, MT 59803
(406) 251-6070
(406) 728-1630 (W)

February 15, 1995

Chairman Grimes
House Committee on Human Services and Aging
Capitol Station
Helena, MT 59620

Chairman Grimes and members of the committee:

I used personal assistants for about 8 years in the past and would like to see HB504 approved by this committee.

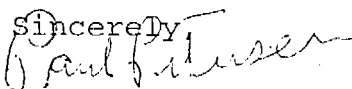
A group of people with disabilities and others in Montana have been trying to make reforms with regards to the Medicaid personal assistance program. We have attempted to work with SRS and the Board of Nursing as well as the Department of Labor with only limited success. We have had success with SRS and support from the Department of Labor, but have not had so with the Board of Nursing.

I had taken on the roll of communicating with the Board of Nursing and have repeatedly had trouble getting phone calls returned and was even told that in order to get a copy of regulations pertaining to nursing delegation I would have to send in a written request. I sent in a list of suggested changes in delegation before the last set of rules hearings on delegation and heard nothing in return. Rather than allowing people to have more control over their lives, things have gotten worse.

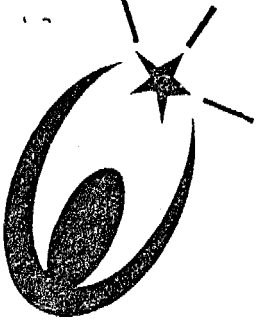
We are here before this committee today because of this history, some of it dating back to 1986 or earlier.

This bill is important because people with disabilities want control over their own lives. We recognize that the costs of Medicaid are rising and this threatens services that are needed by us and others. This bill will help reduce administrative costs by eliminating some of the middle persons. This legislature is the one advertised as the one to turn control over to the people. Here is your chance to do it.

Thank you for your attention. i again ask you to pass HB504.

Sincerely


Paul Peterson



*Coalition of Montanans
Concerned with Disabilities*

P.O. Box 5679
Missoula, MT 59806
(406) 721-0694

EXHIBIT 7
DATE 2/15/95
HB 504

February 14, 1995

Chairman Duane Grimes
House Committee on Human Services and Aging
Capitol Station
Helena, MT 59620

re: Personal Assistance Services reform--HB 504

Dear Chairman Grimes and Members of the Committee:

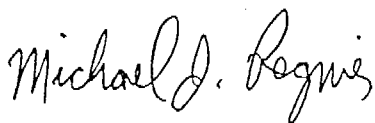
I am testifying today as the state President of the Coalition of Montanans Concerned with Disabilities, or CMCD. CMCD is Montana's state-wide disability rights coalition, and we have worked with disability leaders throughout the state in the design of this bill. It has been a long time in the making, and is based on the experience of people with disabilities throughout the country who use Personal Assistance Services, or PAS. It represents what many other states have done in their respective Legislatures to solve many of the problems people with disabilities have faced concerning PAS. We have had these same problems in Montana for years, and have heard time and time again the legitimate complaints consumers of these services have experienced. It is that the state of Montana act to resolve these problems, and the Legislature can go a long way toward doing that by passing this bill.

Consumers have complained, with little response, for years about a number of issues. Westmont, the single state-wide vendor for PAS in Montana, used to have an annual turnover rate of about 400%; though I do not know the exact current figure, the last estimate I heard was approximately 100%. This means that the entire staff of Personal Assistant's used to turn over completely four times a year, and now this occurs once a year. This virtually guarantees that very few trained Personal Assistants will ever enter a person's home, and that consumers will constantly be in the process of hiring and training new PA's. This bill would substantially improve that situation by allowing consumers to hire, fire, train, manage, and supervise their own PA's, thus allowing them a much greater ability to control and manage these most personal and intimate services being provided to them in their own home, without relying on some bureaucratic administrative service provider to do it form them.

This will also allow consumers the ability to fire Personal Assistants who mistreat them, steal from them, come to the job under the influence of alcohol or drugs, fail to show up to get them out of bed in the morning, or put them to bed at night, or who otherwise abuse or neglect them. We have heard such complaints for years throughout the state on a fairly regular basis, and we know that such problems continue to this day. Passing HB 504 would very effectively address many of these problems, and we know that these measures have worked well in other states.

These are very basic services that are routinely performed by people such as myself, who have the physical ability to perform these tasks independently. They are routinely performed by family members for people with disabilities who do not have the physical ability to perform these tasks themselves. They require no formal medical training, and are regular taught to people with disabilities and family members in a very short time in every rehabilitation center in the country. Why should Montana's laws deny this option to hundreds of people who can easily train their own PA's to perform these services safely and efficiently? And who should the taxpayers of Montana be forced to pay licensed nurses two or three times the cost of these services when their level of training and expertise is completely unnecessary for the performance of these simple tasks? It seems to me that we went into this session with a clear mandate from the voters that this Legislature was to cut bureaucracy and costs wherever they could reasonably be cut, and to get the government off the backs of the citizens of Montana. Passing HB 504 would do both, while maintaining and enhancing the quality of care available to Montanans who need these services and wish to remain as independent as possible in their communities. We strongly urge the Committee to pass this bill for the benefit of all the people of Montana, especially for those who simply wish to live their lives as independently as they can and with as little interference as possible.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Regnier".

Michael J. Regnier
President, CMCD

mjr

Chairman Grimes
House Committee on Human Services and Aging

EXHIBIT 8
DATE 2/15/95
HB 504

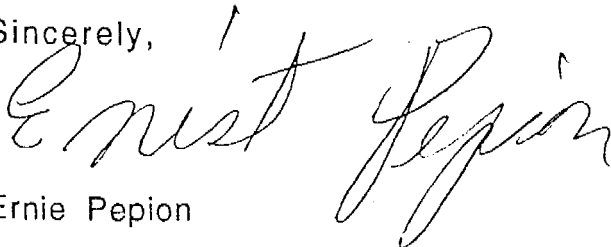
My name is Ernie Pepion, I would like to give my support to House Bill 504, the bill that allows personal care attendants to perform certain duties that are now restricted by the nurse practitioner law. I am a quadriplegic and require daily assistance of a personal care attendant, which the self-directed program of WestMont provides me with. The self-directed program allows me to hire my own personal care attendant and terminate them as well.

In 1972, while in rehabilitation, I was told I had to be independent and learn to instruct other individuals about duties that I could not perform on my own. One of these duties was my bowel care program, and from 1972 until April of 1993 I trained my personal care attendants in this procedure. I had absolutely no problems health related or otherwise. In April of 1993 WestMont, my personal care attendant contractor, started enforcing the Nurse Practitioner Law and problems have been occurring. Since that time I have been restricted from using personal care attendants to assist me and forced to have a nurse come into my home to do my bowel program every other day. On weekends a different nurse comes, who is on a time constraint, and is not sensitive to my bodily needs. Often my weekend bowel care is incomplete.

My nurse, who comes in to do my bowel care every other day costs extra, not only to myself but to the taxpayer as well. I make a \$2 co-payment for each visit, which amounts to \$30 a month. This situation also forces me to be more dependent by having more people involved in my personal care than I need. This situation sometimes leads to voluntary bowel movements. This is not only embarrassing, but it takes away from my sense of dignity and independence. It also could eventually lead to major skin breakdown, which would lead to an expensive hospitalization.

I believe that more self-directed programs which allow a personal care attendant to perform bowel care and other duties as listed in the new self support bill HB 504 should be implemented. This would give the individual more independence and be less expensive. Since the personal care attendants wages are just above minimum wage it is extremely important that we carefully screen for personal care attendants who will be responsible, dependable and committed to the individual's care.

Sincerely,



Ernie Pepion

TESTIMONY OF THE DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES BEFORE THE
~~HUMAN SERVICES APPROPRIATIONS SUB-COMMITTEE~~
(Re: HB 504)

*House Committee
on Human Services
and Aging*

The Department supports HB 504. House Bill 504 provides direction to both the Department of Social and Rehabilitation Services and the Department of Labor to develop rules governing personal assistant services, specifically relating to a self-directed service model. It also requests that persons with a disability who direct their own care be exempted from the nurse practice act.

The Department has been working closely with a group of disabled individuals to develop a self-directed program which incorporates the national trend of empowering a person with a disability to arrange for and direct the use of a personal care attendant. The creation of this program would provide disabled Montanans with the opportunity to take control of very personal services, which is in line with promoting self sufficiency and preserving dignity.

The Department, as they have in the past, is willing to work with the Department of Labor to establish guidelines for this 'consumer as the employer' model of care. The Department is dedicated to developing this program with respect to protection and safety of the consumer, caregiver and the community.

By allowing these individuals to be exempt from the Nurse Practice Act, we are returning the control of these very personal services, back to the consumer. A person with a disability, is currently not able to over see such activities of daily living without the intervention of a skilled nurse. A person without a disability has control over these types of tasks. The Department supports the exemption of self directed participants from the Nurse Practice Act.

On behalf of the Department of Social and Rehabilitation Services, I urge you to pass HB 504.

*Joyce DeCunzio
Medicaid Services Division*

Chairman Grimes
House Committee on Human Services and Aging

Members of the committee, It is my hope that my testimony today will be valuable as you decide, in part, the fate of HB 504

Eight years ago a nightmare became my reality as I lay in a hospital bed, a quadriplegic after surgery. Two years later my property and bank account were depleted. The walk to state agencies began. My once independent lifestyle had come to an abrupt and unexpected end.

I became dependent on the state and required help from three different state agencies for a variety of services. Case management provided me with house keeping services. My personal care attendants assisted me with bathing, dressing, and other personal needs. Registered nurses were also required to do things like clipping toenails, checking blood pressure and administering prescribed medication. Because there were so many people involved with my care and their territories so strictly defined, I was left very disoriented. Every individual service group had their rules. My dilemma was, "who could do what" in my own home?

I just wanted to have my needs met with the least amount of hassle and confusion. Then, as now, I would like to be able to hire someone I trust, without any interference from the state.

Thank you for listening to my concerns

Sincerely



Dorinda Orrell
P.O. Box 265
Belgrade, MT 59714
406-388-4411

February 15, 1995
TESTIMONY HB 504

EXHIBIT 11
DATE 2/15/95
HB 504

My name is Jean Ballantyne. I am a registered nurse from Billings and serve as a member of the Montana State Board of Nursing. As you are aware, the Board of Nursing exists to protect the public health welfare and safety in all matters related to nursing. The Board of Nursing is taking a position of neutrality on HB 504. On behalf of the Board, I am offering for your consideration these comments and concerns.

This bill was introduced without the input of the Board of Nursing. There has been no dialogue about this issue between the Board of Nursing and Department of SRS.

This bill asks that Personal Assistants utilized by persons with a disability be allowed to perform functions which are subject to regulation by the Board of Nursing. Such nursing functions that are named in the bill under "health maintenance activities" include urinary systems management, bowel treatments, administration of medications, and wound care. As you are aware, the Board of Nursing was given statutory authority from the 1993 legislature to write rules for the delegation of nursing tasks. Under current board rules, delegation of the task of administering medication is allowable in specific settings (the home is one such setting). However, the delegation rules do require that the administration of medications be supervised by a licensed nurse. Rules for the delegation of additional nursing tasks have not been developed. This does not mean that the Board of Nursing will not do so. These issues require thoughtful consideration and input from many interested parties. Always in such deliberations, the board of nursing's considerations are focused on the protection of the public.

HB 504 would exempt from the nurse practice act personal attendants who are performing nursing tasks when such an attendant is employed by a disabled person. While on the surface such an arrangement may seem acceptable in terms of promoting independent living for the disabled, we would caution you that there is a negative side. Cost savings derived from providing less nursing care can ultimately increase costs due to complications that result from a lack of nursing attention. Please ask yourselves: With no license to lose, how will attendants who engage in misconduct in their duties be held accountable...other than to lose their jobs and go on to the next unsuspecting vulnerable person?

We hope that you are able to see that the Board of Nursing does not view this issue as one of nursing turf; rather we express our caution to you and our concern for the potential of harm to the consumer.

Thank you for your consideration of these comments.

Jean Ballantyne MNRN

TESTIMONY
NANCY HEYER, RN, PRESIDENT
MONTANA STATE BOARD OF NURSING
HB 504- [REDACTED]

Jean Ballantyne will read my testimony into the record. I am out of state and unable to be with you today.

My testimony is based upon Board discussion held on February 14 per conference call. Our members received word of this bill by reading about it in the newspaper. Please consider the following:

Just last week I stood before you to tell you of another bill which was drafted and introduced without prior discussion with the Board. In November, I received through my work, a copy of a document prepared by SRS which describes a model of delivery of care in which "disabled" persons would be able to self-direct their care by personal attendant. There was a November Board meeting. Since this document has been around for some time with an acknowledgment that the Board of Nursing would strongly oppose, I must raise the question why SRS did not see fit to come to that Board meeting or others prior to that time to discuss this. Since SRS participated fully in the development of SB 121, Delegation of Nursing, and had been told numerous times that adding nursing tasks beyond Administration of Medications was entirely possible and probable should the rules be successfully implemented. I also point out to you that just because the Board issues rules to Delegate, this is not a mandate for all institutions or nurses to participate in Delegation. This bill forces SRS clients to participate in one model of care.

This bill sets up a model of care for ALL 'disabled' persons. No more than hospital or nursing home care is the "only" model for care, but our citizens can be best served when different models of care are provided to fit their needs as their function deteriorates or improves. SB 121 makes this bill unnecessary. As outlined last week, the Board's intent on SB 121 was to improve access to care in settings or situations where there is little nursing care available. "Disabled" folks live in all kinds of settings, some where there is a full staff of licensed nurses. Their competency in choosing, training and directing non-licensed personnel to fulfill all of their physical needs could be highly questionable in some cases.

2.

This bill includes Section (a) through (d). There is a list, often called a "cookbook" or menu of activities. Nurses, if involved in the care, supervise and direct non-licensed persons to do what they must do. We are opposed to any list of activities to be listed in the Practice Act. This does not improve the durability of any list because of changing technology. We have particular issue with:

(b)iii "Health Maintenance Activities: defined in the proposed amendment to the Practice Act. It is my duty to tell you:

Urinary Systems Management: Could range from a Foley catheter placed into the urethra under sterile conditions on Quadriplegic clients: who can easily suffer from Autonomic Dysreflexia, a life-threatening situation, since a stroke can occur. Is this common? Last week in my agency two disabled gentlemen landed in the hospital for such a syndrome which resulted directly from a -ROUTINE Catheter change. This could also mean inserting a sterile catheter into the urethra of a disabled child, and it could also mean inserting a catheter into an incision into the abdomen called a Suprapubic Catheter. In all cases, sterility is not even the main issue, but the knowledge and understanding of the Neurological system..to make the decision whether to NOT perform a task is quite more complicated.

Wound care could be anything from removing a dirty dressing..sterile or unsterile from any human wound. Wound care also requires a method which we remove the old tissue and clean it out by a process of "debridement." It is often painful to a person not paraplegic, however can you imagine the consequences of debriding a wound of a paraplegic who cannot feel the pain, but might get an infection of the bone from poor sterile technique. Bowel treatments?....perforations and pain often occur from a wide variety of bowel care programs.

I submit to you these considerations which are reasonable:

- Care should foster independence in the least restrictive environment, with an absolute mandate that if Nursing tasks are required, Nurses perform them and supervise them.

- SRS needs to ensure prompt, adequate continuous services regardless of who they say the employer is...who is ultimately responsible?

- Review of such activity needs to be conducted by nurses if nursing procedures are being done by personal attendants. The purpose would be to evaluate ongoing appropriateness of this care.

- Social Workers, Occupational Therapists and other providers never should be responsible for Nursing activities of unlicensed persons.

- "Disabled" should have an established grievance process so they can report problems.

EXHIBIT 12
DATE 2-15-95
HB 504

3.

If the client is the employer, does he get sued for wrongful termination if he decides to "fire" his personal caregiver? SRS pay the settlement? Any self-directed model should allow the clients to make responsible choices including preferring a licensed nurse to perform these duties. There are ethical responsibilities of the payer too. The care environment should be safe for the client AND the caregivers, one which is free from abuse, neglect or inappropriate care. Who will determine the competency of the individuals performing the care? Are consumers qualified to competently choose a non licensed person? A Self-Directed model of care is not for everyone, and should include clearly specified responsibilities of ALL parties involved in the caregiving process, including the clients, caregivers, provider and payer.

In summary, I assure you that the Board of Nursing has a tough job. The practice of Nursing in America does believe to a certain limit, individuals who are capable of doing so should be able to self-direct care. The Board of Nursing cannot protect the public from itself but WE do have a duty to develop rules and laws which will do this. How do these frail, disabled folks know if they are capable of self-directing care, and who do they turn to when that system fails? They admit to the hospital, or they have to go into a long term care facility. When things go wrong, the nurse is called in to fix the problem. This is no way to take care of our most vulnerable citizens.

Do not hesitate to ask questions of Board members or staff present.

I am grateful for your time.

Respectfully submitted.

HOUSE OF REPRESENTATIVES
54TH LEGISLATURE

House Human Services & Aging COMMITTEE

WITNESS STATEMENT

Please Print

NAME Patricia Goudie RN BILL NO. HB 504

ADDRESS 31 Sun River-Cascade Rd Sun River, MT DATE 2-15-95

WHOM DO YOU REPRESENT? _____

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: Health Maintenance Activities as defined in Section 2,
subsection 3, b, ii, are tasks that fall under the
Nurse Practice Act, for good reason. Medication administration,
bowel and bladder management, and wound care are more than "tasks"
that one can be "trained" to perform. In actuality, the theory and education
that nurses receive are what protect the patient's health and well-being.
Nurses do more than perform "tasks"; they monitor and continually assess
the patient's response to treatment. They combine this observation with
their education, skills and professional judgement to ensure the
patient's safety and appropriate response to treatment. This bill
would allow uneducated and minimally, or ^{un}trained, persons to
perform such invasive procedures as urinary catheterization, medication
injections, and sterile dressing changes with no knowledge of
the possible consequences of infection or complications that may result
from improper technique. It seems that the

W:\DATA\WP\WITNESS.95
intent of this bill is to cut costs at the expense of public safety.
Allowing untrained, unlicensed, and unregulated persons to reduce cost is not



Montana Nurses' Association

P.O. Box 5718 • Helena, Montana 59604 • 442-6710

DATE 2/15/95
HR 504

February 15, 1995

TO: Barbara Bocher, MNA Executive Director

FROM: Linda Henderson, RN, Commission on Nursing Practice

RE: HB504

Although the intent of this bill is to allow persons with disability the independence to employ personal care attendants of their choice, in essence it is granting any untrained individual immunity from the Board of Nursing to allow the practice of nursing without a license.

Personal care attendants are usually untrained, unskilled individuals hired by SRS to provide assistance with activities of daily living to disabled individuals. The assistance currently provided by these individuals consists of activities that do not fall under the auspices of nursing. HB504 presumes that a disabled individual is skilled at providing "urinary system management, bowel treatments, administration of medications and wound care" for themselves if they were only physically able, and that they would be able to appropriately direct a personal care attendant to provide this care. This seems to be a very broad assumption. After all, the law requires nurses to receive a minimum of 18 months of education from already qualified nurses to perform these activities. Is it realistic to think that disabled individuals will have the level of knowledge required to instruct personal care attendants so that care can be delivered in a safe and effective manner?

Is this bill in the best interest of the disabled individual? The person with a disability may think that they're getting what they want by being able to more directly impact their own care through the direct hiring process. But they may be getting more than what they bargained for if they themselves do not understand or are not able to effectively communicate how to perform the above listed procedures.

This bill appears to definitely be in the best interests of the Department of Social and Rehabilitative Services. They intend to legislate nursing practice away from nurses and effectively eliminate the need for nurses to serve this population. Will we next be seeing policies that eliminate reimbursement for home health nursing for Medicaid recipients?

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Human Services & Aging

DATE 2/15/95

BILL NO. 504

SPONSOR(S) Cobb

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Alvin B. Svalstad	AARP	✓	
Joan Ballantyne	Bd. of Nursing	neutral	
Patricia Goudie, Sun River	MT Nurses Assoc.		✓
Ralph E. Martin	CMCD	✓	
Shelia Jansen Missoula mt	Self	✓	
Barbara Larsen Missoula	CMCD	✓	
Dore DeCruz	SRS		
Paul Peterson	Self	✓	
Don L. Drell	Self	✓	
Sherri Anderson	MT Advocacy Prog	✓	
Jim Meldrum	MILP	✓	
Michael Requier	CMCD	✓	
Steve Skyrud	MT Nurses		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Human Services & Aging
H.B. 504
BILL NO. 504 SPONSOR(S) _____

DATE 2/15/95

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mary Myerger, RN-	Self		X
Sabrina Booher	MNA		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

REP. ELLINGSON said he objects to the licensing being included because there are questions to be answered. If there is licensing, should it be by state or local boards, and if by the state, then would a Board of Tatoo Artists need to be created to establish licensing standards.

SENATOR KLAMPE asked what OSHA's involvement at the present time.

REP. ELLINGSON deferred to Robert Rosini who said they are pushing for world-wide sterilization requirements.

Dr. John Halseth said he wants to make sure that places that puncture the skin are doing a proper job of sterilization, tattooing is a potential source for the spread of communicable disease, and he would like to prevent that.

SENATOR BURNETT asked if regulation by the State Board of Health or the County Health Officer be sufficient.

Dr. Halseth said the State Board of Health would be in control and would instruct the local board of health to enforce.

Closing by Sponsor:

REP. ELLINGSON said this bill provides some modest regulatory control over the practice of tattooing. This is an important public health issue and Montana should not wait until there is an identifiable outbreak of hepatitis, HIV or other communicable disease that is traceable to one particular tatoo artist before imposing some sanitary regulations on this industry. He urged the Committee's favorable consideration of HB 557.

HEARING ON HB 504

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, said HB 504 governs the Department of SRS and Department of Labor to adopt rules for Personal Assistants. He read the Statement of Intent regarding the employment of a Personal Assistant and Plan of Care. He referred to the Fiscal Note saying only 30-50 people could participate in this self-directed program. EXHIBIT 8.

Proponents' Testimony:

Barbara Larson, representing Coalition of Montanans Concerned with Disabilities, handed out copies of the amendments and some information about the bill. EXHIBIT 9 She read her written testimony in support of HB 504. EXHIBIT 10. She distributed arguments prepared for REP. COBB to clarify some issues that were raised before House Health Committee. EXHIBIT 11.

Mike Mayer, Missoula, spoke from his written testimony in support of HB 504. EXHIBIT 12.

Melissa Case read testimony from Kathy Babel from Glendive. EXHIBIT 13.

Shari Anderson, Montana Advocacy Program, said they support HB 504. She presented written testimony. EXHIBIT 14.

Nancy Ellery, Administrator, Medicaid Services Division, SRS, presented copies of her written testimony. EXHIBIT 15. She said they support this bill with the amendments.

Russ Cater, Chief Legal Counsel, Department of SRS, discussed the amendments. He said it is not the intent of this bill for the disabled person to be labeled as an employer, but the Personal Assistant would be the employee of another program or another contractor. The amendments clarify this issue. He said the Department has had a Personal Care component of its Medicaid program for several years, but 7-8 years ago, the Department began having problems with the way these Personal Assistants were treated for purposes of the wage laws. Some Personal Assistants thought they should be employees of SRS, but it was never the intent of the Department to employ Personal Assistants.

Opponents' Testimony:

Barbara Booher, Executive Director, Montana Nurses Association, said the Nurses Association has concern for the safety of the client directing nursing care by the Personal Assistant. They support patient self-determination to the extent possible. She said the questions they had regarding the employment status have been addressed by SRS in the amendments and the Association does not now oppose HB 504, but wants to monitor or take a neutral position on the bill.

Questions From Committee Members and Responses:

SENATOR KLAMPE asked about the reference to the Plan of Care approved by a physician, contained in the Statement of Intent, and where it appears in the bill.

REP. COBB deferred to Barbara Larson who referred to page 3, line 23, and page 4, lines 2-5.

SENATOR KLAMPE said when referring to the Health care professionals, a medical social worker is included in the list. He asked if a medical social worker was capable of developing a plan of care.

Barbara Larson said as stated in the definition, it is a medical social worker who works as a member of the case management team for purposes of home and community-based services. The case

management team is made up of a social worker and a Registered Nurse, both of whom may assess the client's needs.

SENATOR KLAMPE asked if as a member of the team, the social worker can do that.

Barbara Larson said yes.

REP. COBB said a Plan of Care needed to be made and presented to the Committee for approval.

SENATOR FRANKLIN said the teaching aspect should be included in the Plan of Care and asked if there was a program in place called the Self-directed Model.

Mike Mayer said it is in the Westmont program but it really doesn't give a person the control and supervision over the Personal Care Assistant.

SENATOR FRANKLIN asked how the decisions are made to determine who will participate in the self-directed model.

Mike Mayer said that needs to be worked out with the Department.

SENATOR ECK referring to the amendment, she asked about a Personal Assistant being an employee of an entity willing to provide that service, and what the entity is likely to be.

Melissa Case said she is not sure what the intention was and deferred to Barbara Larson.

Barbara Larson said it could be any agency which is currently set up to provide temporary employment services, like a home-health agency that may provide direct care.

Closing by Sponsor:

REP. COBB said he likes the amendments and they seem to work out any disagreements at this time.

MONTANA SENATE
1995 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL

DATE 3/13/95

[illegible]

SEN:1995
wp.rollcall.man
CS-09

DATE 3/13/95

Fiscal Note for HB0504 as introduced

BILL NO. HB 504

DESCRIPTION OF PROPOSED LEGISLATION:

A bill requiring the Department of Social and Rehabilitation Services (SRS) and the Department of Labor and Industry (DOLI) to adopt rules governing the use of a personal assistant by a person with a disability.

ASSUMPTIONS:

1. There are currently 30 persons who participate in the Montana Medicaid self-directed personal assistant program. Of these individuals, 30% (9) have three visits per week and 10% (3) have one visit per month. The remaining 60% do not require skilled nursing intervention and would not be affected by this legislation. This service is estimated to cost \$67.51 per visit.
2. According to WestMont, it is estimated that this legislation would increase the number of persons participating in the self-directed program to 50.
3. For the purposes of this fiscal note, it is assumed that the number of visits would increase to 40% (20) receiving three visits per week and 20% (10) receiving one service per month.
4. The functions now performed by a Registered Nurse will be performed by a personal care attendant. This cost is estimated at \$11.03 per hour. Each visit requires one hour.
5. In summary, currently there are 1,440 visits per year at \$67.51 a visit, or a Medicaid annual cost of \$97,200. In the 1997 biennium, there will be 3,240 visits per year at \$11.03 a visit, or \$35,700 annual cost, with a cost savings of \$61,500 a year. And the federal government will share in approximately 70% of the program cost.

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
SRS cost savings:		
Benefits	(61,500)	(61,500)
<u>Funding:</u>		
General Fund (01)	(18,600)	(19,100)
Federal special revenue (03)	(42,900)	(42,400)
Total	(61,500)	(61,500)

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JOHN COBB, PRIMARY SPONSOR DATE

Fiscal Note for HB0504, as introduced

HB 504

EXHIBIT NO. 9DATE 3/13/95BILL NO. HB 504

Amendment to House Bill #504

1. Page 1, line 15.

Following: "disability"

Insert: ", or an immediately involved representative, such as a
parent or guardian,"

Page 1, line 17.

Following: "as"

Insert: "though the person was"

Following: "employer"

Insert: ", for the purpose of selection, management and
supervision"

Page 1, lines 17 and 18.

Following: "assistant" on line 17

Strike: "in making the decisions of who to employ, terms of
employment, length of employment, and other matters."

Page 1, line 18.

Following: "matters."

Insert: ", although the personal assistant is the employee of
another."

Page 1, line 19.

Following: "as"

Strike: "an"

Insert: "though that person was the"

Page 1, line 27.

Following: "disability"

Insert: ", or an immediately involved person, such as a parent or
guardian,"

Page 1, line 28.

Following: "as"

Strike: "an"

Insert: "though the person was the"

Following: "employer"

Strike: "in the employment"

Insert: ", for the purpose of selection, management and
supervision"

Following: "assistant"

Insert: ", although the personal assistant is the employee of
another"

2. Page 2.

Following: line 22

Insert: "(3) The department is not required to provide
personal care services as part of the medicaid program in
a self-directed service model as described in this
section unless the personal assistant is an employee of
an entity willing to provide the protections guaranteed
to workers under existing labor laws, including but not
limited to payment of workers' compensation and
unemployment insurance premiums.(4) This section does not prohibit the department
from determining the amount, scope and duration of

personal assistant services provided under the Montana medicaid program nor does this section mandate personal assistant services.

(5) Medical and related liability for personal care services provided pursuant to this section rests with the person directing the services."

Page 2.

Strike: line 23 in its entirety

Page 4, lines 11 and 12.

Strike: section 4 in its entirety

-End-



*Coalition of Montanans
Concerned with Disabilities*

P.O. Box 5679
Missoula, MT 59806
(406) 721-0694

SENATE HEALTH & WELFARE
EXHIBIT NO. 10
DATE 3/13/95
BILL NO. HB 504

March 10, 1995

Chairman Jim Burnett
Senate Committee on Public Health, Welfare and Safety
Capitol Station
Helena, MT 59620

RE: House Bill No. 504: Personal Assistance Reform Bill

Dear Chairman Burnett and Members of the Committee:

The intent of this legislation is to make available to people with disabilities who require personal assistance services (PAS) the option of directing their own care through a self directed service model which recognizes the consumer as employer. The bill as amended would also allow a family member or guardian, "immediately involved representative", to assume the responsibility for directing PAS should the individual with the disability not have the capacity to direct his/her own care. Further, this legislation will promote cost savings in the Medicaid-funded personal assistance service program through two primary mechanisms. First, persons participating in the self directed program will not require the oversight, supervision, and control by a medically-oriented provider agency, as is currently practiced in the PAS program administered by West Mont. Lower administrative and nursing intervention costs will provide cost savings. Second, the act will allow personal assistants to perform routine health maintenance activities, judged by a physician or health care professional to be safe for that individual to receive, to be performed by a personal assistant rather than by licensed nurses as required by current state law. Personal assistant wages are considerably lower than those of LPN's or RN's, which translates into additional money saved.

It is important that committee members understand a few key issues in considering this legislation. First, the self directed service model is not designed to meet the needs of all people currently receiving personal assistance services in the state of Montana. It is targeted for those individuals who have the capacity and the desire to direct their own services to do so without the intrusion in their daily life imposed by an outside agency. For these individuals, this legislation opens the door for increased independence, dignity, and freedom from unnecessary bureaucracy and intervention in their day to day lives. On the other hand, it is well recognized that many individuals have neither the skills, nor the desire to participate in a self directed program. This bill would do nothing to

prevent such individuals from receiving the current, more medically-oriented personal assistance services through an agency-based model, as currently seen in the West Mont program.

Second, it is important to understand that the self directed personal assistance model, while not a medical model, does address a fundamental need to insure that the basic health and safety needs of participants are met. Some health care professionals may argue that without ongoing nurse supervision and extensive training of personal assistants that individuals' health will be jeopardized. This is not the case. The major protection against this occurrence lies in the definition of health maintenance activities as defined in the legislation. On page four, lines 14 - 18, the bill clearly spells out that "health maintenance activities" to be performed by personal assistants are those activities in the opinion of the physician or other health care professional for the person with a disability that could be performed by the person if the person were physically capable and if the procedure can be safely performed in the home. Also, on page one in the statement of intent for HB 504, the legislation reads (lines 20 - 23) that before a person with a disability would be allowed to act as an employer, the person must also have a plan of care approved by a physician or health care professional, stating what aspects of the disabled person's care the personal assistant may be assigned. In short, only those health maintenance activities which the health care professional and the consumer agree on which may be safely performed will be included under the tasks which personal assistants may provide.

Third, consumer responsibility is a key concept in a self directed personal assistance service model. The bill as amended would require that, "medical and related liability for personal care services provided pursuant to this section (Sec. 2) rests with the person directing the services." Further, the administrative rules to be adopted by the Department of Social & Rehabilitation Services and the Department of Labor should provide avenues for consumers to receive training in management of personal assistants if the consumer is in need of such support, and should in addition provide for assistance in the training of personal assistants if necessary. Once trained, however, consumers are responsible for ensuring that their personal assistants work as directed and perform to their satisfaction. The consumers, not a provider agency are responsible for ensuring that their needs are met.

Fourth, it should be noted that many other states have established self directed personal assistance programs which recognize the consumer as employer of personal assistants as opposed to an agency-based model. Kansas, South Dakota, California, Oregon, and New York are among the states which have successfully implemented self directed services.

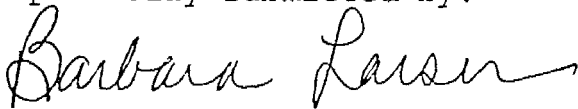
The National Council on Independent Living (NCIL), in its position on personal assistance services, recognizes key features of the model which is being suggested for Montana. The following are quotes from the NCIL position paper.

- * "The PAS users choice, direction and control in selecting, training, scheduling and supervising their personal assistants must be maximized in all management options."
- * "All models must be non-medicalized and community based to the greatest extent possible."
- * "State issues such as medical and nursing practices acts and personal assistants registry acts must be resolved so that health-related tasks such as medication dispensation and injection and catheterization can be performed by unlicensed personal assistants under the direct control and supervision of PAS users when that is the choice."

Further, HB 504 reflects the recommendations for a self directed personal assistance service program which were developed in the fall of 1994 by the Missoula work group established by Montana Department of Social and Rehabilitation Services in order to obtain feedback on reform of Montana's personal assistance service program. Copies of both the working group recommendations and the NCIL position statement of personal assistance services are attached.

In closing, the Coalition of Montanans Concerned with Disabilities urges you to pass HB 504 with amendments as submitted on the attached page. The amendments reflect clarification and "fine tuning" developed in conjunction with the Department of Social and Rehabilitation Service and the Department of Labor and Industry.

Respectfully submitted by:



Barbara Larsen,
Coalition of Montanans Concerned with Disabilities

Feb. 17, 1995

Prepared for Representative Cobb

Re: Arguments for second reading for H.B. 504

Q: Will this bill make every person with a disability responsible for managing thier personal assistant services (PAS)?

A: Self directed PAS is not designed to meet the needs of all people currently receiving PAS in the state of Montana. It is targeted for those individuals who have the desire and capacity to direct their own services to do so without the intrusion in their daily life imposed by an outside medically oriented agency. This bill would not prevent persons from selecting PAS through an agency directed model currently seen in the West Mont program.

Q: Who will make the decision of whether a person could use this model of services, and have tasks done by a non-licensed personal assistant (PA)?

A: In the Statement of Intent, page 1, line 17 through 19 states "before a person with a disability would be allowed to act as an employer, the person must have a plan of care approved by a physician or healthcare professional, stating what aspects of the disabled person's care the personal assistant may be assigned. The act would allow personal assistants (PA) to perform routine health maintenance activities, judged by a physician or health care professional to be safe for that individual to receive, to be performed by the personal assistant rather than by licensed nurses as required by current state law. Refer to page 3, line 30 through line 3 on the top of page 4.

Q: Since these tasks fall under the regulation of the Nurse Practices Act, and require that the person preforming the task to recieve training to do those tasks, how will PA providers be trained to insure that the procedure is being done safely?

A: During the Committee hearing, we heard from persons with disabilities, who stated that during their rehabilitation, they and their family members were taught to do these procedures. Given the nature of disability and the current rules governing Medicaid funded PAS, all persons with disabilities have one on one relationship with their Physician, with a reassessment annually. This Physician can order services such as PAS as well as home health nursing services, occupational therapy, etc., that currently provide training on these procedures in a persons homes as a part of "transition services" for purposes of patient teaching. This bill allows for that mechanism of training and partnership between the "health care professional", the person with the disability, and the PA. ongoing training would be the responsibility of the persons with the disability, either to seek more assistance personally or engage the help of the "health care professional". For the population that this act is intended to serve, these procedures are routine in nature and if a medical intervention were needed, they can arrange for that intervention by seeking out medical services.

Q: How can it be argued that by exempting these PAS when providing these tasks at the direction of a person with a disability, will save money, if the person is put at risk?

A: Only those health maintenance activities which the Physician, health care professional and consumer agree on, which can be safely performed will be included under the tasks that the PA can perform. Personal assistant (PA) wages are considerably lower than those nursing services provided through an agency. The unit rate of PAS is approx. \$11.00 per hour vs. \$60.00 to \$80.00 per visit charged by and nursing service agency.

Q: Who will assume the liability if the PA performs a task wrong?

A: This bill (through amendment) recognizes that the person directing his/her PAS has the liability and responsibility to ensure that their needs are met. Once trained, consumers of PAS are responsible for ensuring that their personal assistants work as directed and performed to their satisfaction.

Q: Was the Board of Nursing involved in developing this bill?

A: Not directly. The group(s) requesting this legislation have sent copies of the bill to the the Board of Nursing, but they have not gotten any direct feed back on the bill. In testimony during the committee hearing, Paul Peterson stated his experience in trying to address issues important to the disabled community through the nursing delegation bill passed last session. His experience was that the Board of Nursing did not return phone calls, taking several calls to receive copies of the rules adopted for delegation of nursing tasks. Comments that were submitted by him were not responded to in that rule making process. It should be noted that during the committee hearing the Board of Nursing provided neutral testimony.

Q: How will this bill improve current PAS being provided in Montana?

A: In the past the turnover of PAs in the current agency directed model has been 400%. This has improved to about 100%. In a self directed model, recognizing the consumer as though they were the employer, the person directing their care would be allowed to personally recruit, interview, select and manage their PA services. This has been proven to increase the longevity in the person retaining the PAS in their home. Consumer responsibility is a key concept in a self directed PAS model.

Q: Have there been other groups study this method of delivering PAS?

A: The National Council on Independent Living, in its position on PAS, recognizes key features of the model which is being suggested for Montana. The following quotes from the NCIL position paper:

"The PAS users choice, direction and control in selecting, training, scheduling and supervising their PAS must be maximized in all management options"

"All models must be non-medicalized and community based to the

greatest extent possible."

"State issues such as medical and nursing practices acts and personal assistants registry acts must be resolved so that health-related tasks such as medication dispensation and injections and catheterization can be performed by unlicensed PA under the direct control and supervision of PAS users when that is the choice."

In 1994, the Department of SRS established a working group of consumers and professionals to obtain feedback on reform of Montana's PAS. HB 504 reflects their recommendations.

Q: Has this model of consumer directed services with exemptions from nurse practice acts, being done in other states?

A: Yes, Kansas, Oregon, South Dakota, California, and New York have successfully implemented self directed services with exemptions from their nurse practice acts.

Q: Under this bill, how will the rights of worker's be protected under Montana labor law?

A: H.B. 504 creates a partnership between the person directing their own PAS and a Fiscal Agent representing the rights and protections of personal assistants (PA) under Montana labor law. The Fiscal agent would delegate authority to the person directing the services for day to day management of the services in a persons home. The Fiscal Agent would be responsible for billing Medicaid for services, paying the attendant wages and necessary withholdings for taxes, social security, worker's comp., etc..

March 13, 1995

Mike Mayer
2370 Village Square
Missoula, MT 59801

Chairman Jim Burnett
Senate Public Health, Welfare and Safety Committee
Capitol Station
Helena, MT 59620

Dear Chairman Burnett and Members of the Committee:

I appreciate the opportunity to submit written testimony for your consideration.

I urge you to pass House Bill 504 because I feel that it does much to enhance the independence of Montanans with disabilities who require personal assistance services. I am quadriplegic and have been utilizing personal assistance services for the past 18 years. I am not a Medicaid recipient, and have no other insurance coverage for my personal assistance services, so I pay for my services out of my own pocket. I am considered by the Internal Revenue Service to be a household employer, employing domestic servants. As such, I am responsible for not only the recruitment, training, management, and supervision of my personal assistants, I also have the responsibility for withholding and paying taxes, filing payroll reports, and other administrative tasks.

I am very thankful that I have the ability to manage my own personal assistants and that I am not forced to participate in the Medicaid-funded personal assistance program as it currently exists in this state. Individuals on that system have little or no control over selecting, training, or managing their own personal assistants. House Bill 504 would allow those individuals on Medicaid who receive personal assistance services the same option to manage their own day to day care. People who have the desire and the ability to manage their own services must be given the opportunity to do so. By allowing them to direct their own personal assistance services, the state of Montana will realize cost savings in addition to allowing them more independence and dignity in their day to day routine.

Imagine if you will a situation in which you require assistance but have virtually no control over selecting who comes into your home to help you with very personal and intimate tasks such as bathing, personal hygiene, bowel and bladder care, and other daily functions. How would you feel if you were unable not only to select who comes into your home, but also to control when and how certain tasks are performed. A person should not have to give up such basic rights simply because the state is paying for the

services. The self directed service system which HB 504 would establish would allow other Montanans who receive Medicaid funding the option of being in charge of their daily lives.

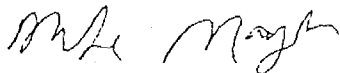
I know that certain health care professionals, most probably licensed nurses, will come before this committee and argue that people with disabilities will be put in jeopardy if there is not ongoing nurse supervision and extensive training and certification of personal assistants. They will probably argue that certain tasks, such as bowel and bladder care, wound care, and other basic procedures should only be performed by licensed nurses. They will cite a medical need for requiring ongoing nurse supervision and/or restriction of certain tasks to the realm of licensed nurses only.

This argument does not hold water. Montana's current nurse practice act allows for gratuitous nursing performed by friends or members of the family. As long as friends or family members work without pay; they can provide virtually any nursing service or procedure without restriction or limitation by the nurse practice act. If it were simply a matter of medical necessity, it seems logical that the nurse practice act would not allow any specialized procedures to be done by persons other than licensed nurses. Since the nurse practice act currently allows friends and family members to perform the type of tasks which HB 504 is recommending, it makes perfect sense that trained personal assistants be allowed to do these same procedures at the direction of a person with a disability.

In over 18 years of directing my own personal assistance services, I have never had medical complications resulting from the services which personal assistants do for me, including basic wound care and assistance with bowel care. I take the responsibility for training my assistants, based on training which was give to me during my rehabilitation program years ago. I also have the option of securing a doctor or nurse to assist with training if the need should arise.

In closing, I thank you for the opportunity to provide testimony and encourage you to vote yes this important piece of legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mike Mayer", with a stylized, cursive-like script.

Mike Mayer

03/10/95 10:23

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BOSS

EXHIBIT NO. 13

DATE 3/13/95

BILL NO. HB 504

Barb Larson

Fax 243 2349

I would like to give written testimony to encourage the passing of HB 504.

My name is Kathy Babel and I live in Glendive, MT. My son Shane is 18-years old and receives personal assistance care via the Physical Waiver program from Montana Medicaid. His care plan is implemented by the contracting agent (West Mont).

Shane has Cerebral Palsy and is quadriplegic. He requires total physical care. He requires someone to feed him, dress him, put him in his wheelchair and sometimes when it's his manual chair, even push him to where he's going. Now if that isn't enough he also takes medications 3x a day, is incontinent and requires a bowel management program.

Shane knows what meds he takes. He knows the amounts, the color and the words that need to appear on the label. He also knows how these meds are supposed to taste. He knows when and how often he needs to take these meds. He also knows when to raise or lower the dose. He also knows if new RX is needed to meet his physical needs.

Shane knows when his bowel management needs to occur. He has developed his own schedule.

He knows how to train people to assist him. He has learned to know his own body and what he needs to be as comfortable as possible. He took CPR in 8th grade and got a provisional card. He was able to direct one of his classmates through all the steps and met the class requirements. When he has been in the hospital he unfortunately had to give instructions to medical staff on how to meet his needs.

The current PAS program certainly does not allow Shane to control his life in any true sense. His bowel program is at the convenience of the nurse, not his. He is not sick. He develops a very close relationship with his physician and does not need nor want weekly interventions (intrusions) by medical staff in his home.

I do not believe that Shane is any different than many of the individuals in Montana requiring Personal assistance services. It is difficult for the world to realize that persons with severe physical disabilities can really be independent. It would be so easy continue giving lip service but still mandating that medical personnel are needed to allow disabled individuals to live on their own. We must all **STAND UP AND SHOW OUR DISABLED PEERS THAT WE REALLY MEAN IT WHEN WE SAY YOU CAN STAND ON YOUR OWN FEET. YOU DO NOT NEED TO LIVE IN INSTITUTIONS. YOU CAN LIVE IN YOUR OWN HOME AND CHOOSE WHO ASSISTS YOU WITH YOUR DAILY PERSONAL NEEDS. IN FACT WE NEED TO ENCOURAGE THIS INDEPENDENCE. IT IS THEIR RIGHT AND OUR RESPONSIBILITY.**

The current Self Directed PAS is nothing but mere lip service. The only benefit is that the aide and person can have each others phone numbers and have direct contact when aide is sick. Hiring is a joke and there is no fiscal responsibility whatsoever. It only gets the contractor off the hook for not scheduling or making sure someone is available to provide services.

I encourage you to pass HB 504. Passing this bill will also save Medicaid \$\$\$\$. Disabled individuals do not want to spend any more \$\$\$ than is needed. This gives them the opportunity to assist in a costs saving in their care plan. I do not believe that it will put any nurse out of work or any Home Health agency out of business.

I thank you.

VIOLATION 18P16

NCIL

NATIONAL COUNCIL

ON

INDEPENDENT LIVING

POSITION ON

**PERSONAL ASSISTANCE
SERVICES**

The original of this document is stored at
the Historical Society at 225 North Roberts
Street, Helena, MT 59620-1201. The phone
number is 444-2694.

**TESTIMONY OF THE DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES BEFORE THE
SENATE PUBLIC HEALTH AND SAFETY COMMITTEE
(Re: HB 504)**

The Department supports HB 504, with amendments. House Bill 504 provides direction to both the Department of Social and Rehabilitation Services and the Department of Labor to develop rules governing personal assistant services, specifically relating to a self-directed service model. It also requests that persons with a disability who direct their own care be exempted from the nurse practice act.

The Department has been working closely with a group of individuals with disabilities to develop a self-directed program which incorporates the national trend of empowering a person with a disability to arrange for and direct the use of a personal care attendant. The creation of this program would provide Montanans with a disability the opportunity to take control of very personal services, which is in line with promoting self sufficiency and preserving dignity.

The Department, as they have in the past, is willing to work with the Department of Labor to establish guidelines for this 'consumer as the employer' model of care. The Department is dedicated to developing this program with respect to protection and safety of the consumer, caregiver and the community.

By allowing individuals to be exempt from the Nurse Practice Act, we are returning the control of these very personal services, back to the consumer. A person with a disability, is currently not able to oversee such activities of daily living without the intervention of a skilled nurse. A person without a disability has control over these types of tasks. The Department supports the exemption of self directed participants from the Nurse Practice Act.

On behalf of the Department of Social and Rehabilitation Services, I urge you to pass HB 504, with amendments.

DATE 3/13/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB 504, 557, 539

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Check One

Name	Representing	Bill No.	Support	Oppose
Russ Cater	SRS	HB504	X	
Mamie Flinn	MCA	HB504	✓	
Rae Dringman	Philip Morris	539	✓	
Bill Devine	Center for Adolescent Delp	539	✓	
Toni Jensen	Am Lung Assoc	539	✓	
Bambi Doohen	Mt. Nurses Assoc	HB539	✓	
Kerry Campbell	American Lung Assoc	HB539	✓	
Cindy Hayden	American Lung Assoc	HB539	✓	
Evangelina Duke	Yellowstone H-H Self Student	HB539	✓	
Daphne Evans	MCCHD	HB539	✓	
Megan Cumming	Stevensville H-H	HB539	✓	
Holly Cumming	MCCHD	HB539	✓	
Char Maharg	DOR	HB539		
Gina Buss	Billings MTI	HB539	✓	

Brenda Schelm

VISITOR REGISTER

Nancy Eller

SRS

HB539

HB504

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-13-95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: H.B. 504

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Barbara Larsen	Coalition of Montanans Concerned with Disability	504	☒	
Sherril Anderson	MT Advocacy Program	504	☒	
Mike Mayhew	Coalition of Montanans	504	☒	
	Coalition of Montanans			
	Disability			
Nancy Elley	SRS	504	☒	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

these people's education and skills, and they are performing the procedure as well as physicians are.

SENATOR ECK said her concern is similar to that of SENATOR MOHL. She said there have been a lot of bills asking the Legislature to determine the scope of practice for given professions, and in this case, the responsibility has been place with the Board of Medical Examiners. She would prefer their making the decision for the scope of practice for Physicians Assistants.

SENATOR SPRAGUE said he thinks this bill is asking the Committee to reach back to say what you have been doing for several years is now improper and illegal. He said that is not right, but if this bill makes rules, conditions and credentials to be met, to apply "from this day forward," then that's fine. He said the Board of Medical Examiners needs to make this decision, and they are abdicating their responsibility by not doing so. If the intent of this bill is to set up new criteria to apply from this day forward, that's OK, but should not consider grandfathering is not right.

Motion/Vote: SENATOR KLAMPE made a substitute motion to TABLE HB 442. The motion resulted in a TIE VOTE (by Roll Call).

Vote: The BE CONCURRED IN MOTION CARRIED with SENATORS SPRAGUE, ECK, FRANKLIN, and KLAMPE voting NO.

SENATOR BURNETT came in to the hearing.

SENATOR KLAMPE left his voting proxy with SENATOR ECK as he left the hearing.

EXECUTIVE ACTION ON HB 504

Motion: SENATOR ECK moved the Amendments to HB 504 DO PASS.

Discussion: SENATOR BENEDICT said these amendments were offered by the Department.

Susan Fox explained the amendments, saying if the person receiving the personal care was called the employer there were certain ramifications from Workers' Compensation and unemployment insurance, so the amendments 1-6 insert language the person is the employer only for the selection, management, and supervision of the personal care assistant, but not for the purposes of Workers' Compensation and unemployment insurance. The other amendment 7 adds some subsections for which SRS had some concern, because this bill does not require SRS to provide personal care services as part of the Medicaid program in its self-directed service model.

SENATOR SPRAGUE asked if this refers to their conversation regarding SENATOR BENEDICT's daughter.

SENATOR BENEDICT said the bill accomplishes that, and the amendments just clean it up to make sure Workers Compensation and unemployment insurance don't become involved in this process. The people who provide this service are independent contractors.

Vote: The DO PASS motion for the Amendments to HB 504 CARRIED UNANIMOUSLY.

SENATOR FRANKLIN asked about the treatment plan amendment, which is conceptual.

Motion: SENATOR FRANKLIN moved the Conceptual Amendment to HB 504 DO PASS.

Susan Fox said the amendment concerns a Plan of Care. The Plan of Care definition will be inserted in Section 1, and would apply only to personal care services for those who are paid for by Medicaid. She read the definition.

SENATOR BENEDICT asked if this limits the ability of someone who wants to use a personal care assistant only to those who are on Medicaid. He didn't think that is the intent.

SENATOR BAER said, that is what it says.

SENATOR BENEDICT said he can't support the amendment because it's too vague for him to be comfortable with.

SENATOR ECK referred to the Section being amended, saying it does not limit it to Medicaid, and wondered if there is language in the amendment that would limit it to Medicaid.

SENATOR BENEDICT said that is what he heard.

Susan Fox said part of the problem is where Section 1 being placed. Adopting rules is being modified in this section on Medicaid services. The bill is aimed toward those services paid for through Medicaid. She said Section 2 deals with the Nurse Practice Act.

SENATOR FRANKLIN asked if SRS used the language which Barbara Larson and Mike Meyers submitted, and where did they want it inserted.

Susan Fox said they wanted it inserted in Section 1.

SENATOR BENEDICT said he didn't know if this language had been OK'd by the bill's Sponsor, REP. COBB.

SENATOR FRANKLIN said it had not.

SENATOR BENEDICT asked if not having a definition of a Plan of Care in the bill would jeopardize the bill.

Susan Fox said she didn't think it would, but there is a reference to a Plan of Care in the Administrative rules from SRS. The services have to be satisfied in a Plan of Care ordered by a doctor and developed by a Registered Nurse.

SENATOR BENEDICT said he would like to have something in the bill that satisfies the concerns of the Registered Nurses because they are the ones who will have to come up with this Plan of Care.

SENATOR FRANKLIN asked Barbara Booher to make a statement.

Barbara Booher said it was their intention for the Plan of Care to encompass everyone who would use these Personal Assistant services. She suggested creating a new section to include the Plan of Care definition, and said they were not trying to limit it to only those people under Medicaid services.

SENATOR BENEDICT suggested deleting the reference to "Medicaid" and just say "for purposes of this section."

Susan Fox said the problem is with the way the bill is drafted, and it gets codified into Medicaid. She said she is not sure if this will affect those who are paying for the service on their own or through private insurance.

SENATOR BENEDICT said one of the Proponents of the bill thought it would help him to hire someone as an Independent Contractor.

SENATOR FRANKLIN asked if the idea of a new section is workable.

Susan Fox said she thought it was, but if the intent of the bill is to cover anyone who wants to use personal care services, regardless of whether Medicaid is paying for it or not, the codification instruction may also need to be changed.

SENATOR BENEDICT suggested using the words "Medicaid" and "non-Medicaid."

SENATOR ECK asked if it could be put into the statement of intent because the Department already has rules.

SENATOR FRANKLIN agreed with SENATOR ECK. She said the only purpose was to give some parameters to the Plan of Care.

Susan Fox said that may help because traditionally a term is not defined unless it is being used in a section. The only place it is used is in the Statement of Intent, and they are not codified but are specific directions to a department on rule-making.

SENATOR BENEDICT asked if everyone was comfortable with the language.

SENATOR FRANKLIN said the language may be pared down to be inserted grammatically.

SENATOR BENEDICT asked if the reference to Medicaid could be left out of the language.

Vote: The DO PASS motion for the Conceptual Amendment to HB 504 CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR FRANKLIN moved HB 504 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 539

SENATOR BENEDICT said there are 2 amendments and the short amendment (EXHIBIT 1) is not necessary if the long amendment (EXHIBIT 2) is passed. The long amendment was given to him, with the concurrence of the bill's Sponsor, REP. SOFT. It provides for the penalty of \$25.00 on the clerk who sells the tobacco products.

Motion/Vote: SENATOR BENEDICT moved the Amendment (EXHIBIT 2) to HB 539 DO PASS. The motion CARRIED with SENATOR FRANKLIN voting NO.

Motion: SENATOR BAER moved HB 539 BE CONCURRED IN AS AMENDED.

Discussion: SENATOR SPRAGUE said he didn't think this bill should be in the Public Health Committee, but should have been in the Judiciary Committee or Business Committee.

SENATOR BENEDICT said he didn't think there was any intended mischief when the bill was assigned to the Public Health Committee. The Youth Tobacco bills were heard in the Business and Industry Committee in the last Session.

SENATOR SPRAGUE asked which House Committee this came from.

Mona Jamison said it came from the House Human Services Committee.

SENATOR BENEDICT said that is their Health Committee there.

SENATOR MOHL said maybe because the previous bill came out of Judiciary is the reason it's not working, and maybe this one will work.

SENATOR SPRAGUE made an observation that this bill has kids policing one another.

Vote: The Be Concurred In As Amended motion CARRIED with SENATOR FRANKLIN voting NO.

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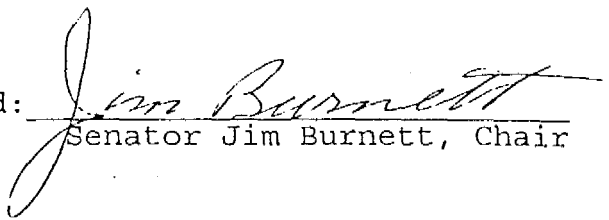
SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 16, 1995

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration HB 504 (third reading copy -- blue), respectfully report that HB 504 be amended as follows and as so amended be concurred in.

Signed:


Senator Jim Burnett, Chair

That such amendments read:

1. Title, lines 8 and 9.

Following: "AND" on line 8

Insert: "AND"

Following: "MCA" on line 8

Strike: the remainder of line 8 through "DATE" on line 9

2. Page 1, line 15.

Following: "disability"

Insert: "or an immediately involved representative, such as a parent or guardian,"

3. Page 1, line 17.

Following: "as"

Insert: "though the person is"

Following: "employer"

Insert: ", for the purposes of selection, management, and supervision,"

4. Page 1, line 18.

Following: "matters"

Insert: ", although the personal assistant is the employee of another person or entity"

5. Page 1, line 19.

Following: "as"

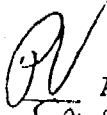
Strike: "an"

Insert: "though that person is the"

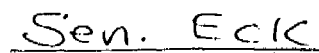
6. Page 1, line 21.

Following: line 20

Insert: "The contents of a plan of care must be addressed by rule and must include the individual's needs for personal assistance services, a plan for emergency back-up, and tasks assigned to the personal assistant. The plan of care may also address training, recruitment, and replacement of personal assistants and schedules for supervision and annual

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

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review of care by the health care professional."

7. Page 1, line 28.

Following: "as"

Strike: "an"

Insert: "though the person is the"

Strike: "in the employment"

Insert: ", for the purposes of selection, management, and supervision,"

Following: "assistant"

Insert: ", although the personal assistant is the employee of another person or entity"

8. Page 2, line 23.

Strike: subsection (3) in its entirety

Insert: "(3) The department of social and rehabilitation services is not required to provide personal care services as part of the medicaid program in a self-directed service model as described in this section unless the personal assistant is an employee of an entity willing to provide the protections guaranteed to workers under existing labor laws, including but not limited to the payment of workers' compensation and unemployment insurance premiums.

(4) This section does not prohibit the department of social and rehabilitation services from determining the amount, scope, and duration of the personal assistance services provided under the medicaid program, nor does this section mandate personal assistance services.

(5) Medical and related liability for personal care services provided pursuant to this section rests with the person directing the services."

9. Page 4, lines 11 and 12.

Strike: section 4 in its entirety

-END-